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Supreme Court, U.S.
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IN THE

Supreme Court of the United States

DONALD M. CASSATA, Director of the Adams County Department of Social Services, and ADAMS COUNTY BOARD OF SOCIAL SERVICES,

Petitioners,

v.

FRANCES F. WESTON, CHRISTINE M. KNEUBEHL, AND SHAUNA DISHER, on behalf of themselves and all others similarly situated,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS
OF THE STATE OF COLORADO

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the Colorado Court of Appeals erred in construing the language of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and the Colorado Works Program Act to find that participants in the Temporary Assistance for Needy Families program have a constitutionally protected property interest in the receipt of welfare benefits, and, therefore, a cognizable claim under 42 U.S.C. § 1983?

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The decision of the Colorado Court of Appeals has been published at *Weston v. Cassata*, 37 P.3d 469 (Colo.App.2001).

BASIS FOR JURISDICTION

Petitioners' petition for writ of certiorari to the Colorado Supreme Court was denied on January 14, 2002. The Colorado Court of Appeals issued its mandate on January 18, 2002, and ordered it recalled on January 23, 2002. This Court has jurisdiction pursuant to 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS

United States Constitution, Amendment XIV, § 1.

Citizenship defined - privileges of citizens. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. § 1983 (1979).

Civil action for deprivation of rights. Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United

States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Personal Responsibility and Work Opportunity Reconciliation Act, Pub.L. 104-193, 110 Stat. 2105.

Colorado Constitution, Article II, Section 25.

Due process of law. No person shall be deprived of life, liberty or property without due process of law.

Colorado Works Program Act, § 27-2-701, *et seq.*, C.R.S.

9 CCR 2503-1, Colorado Department of Human Services Staff Manual, Vol. 3, Rule 3.830.21.

Adequate notice. Failure to give prior adequate notice of an adverse action shall be grounds for setting aside the action on appeal. To be "adequate", the notice must meet the following standards:

A. The notice must be in writing; and,

B. It must describe clearly in terms that are understandable to the applicant or recipient the action to be taken and the reason(s) for the action; and,

C. It must refer specifically by number to the section(s) of the State Department's rules and/or in the Colorado Works Program, the county's official written policy(s) that require or permit the action being taken, or cite the specific changes in federal or state law requiring the action; and,

D. It must state the effective date of the proposed action; and,

E. It must explain the individual's right to request a local level dispute resolution conference and state level fair hearing, the time period for requesting a conference or hearing, and the steps which must be taken to obtain a conference or hearing; and,

F. It must explain the recipient's right to continued benefits and the obligation to repay if it is determined that the recipient was not entitled to receive them; and,

G. It must inform the individual of his/her right to be represented or assisted by legal counsel, a relative, a friend or a spokesperson of his/her choosing; and

H. To the extent practicable, notice shall be in his/her primary language. If s/he is illiterate, the action shall also be explained verbally.

STATEMENT OF THE CASE

In 1996, the United States Congress enacted the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), Pub.L. 104-193, 110 Stat. 2105 (codified under various titles and parts of the United States Code, with the part most pertinent to this petition appearing at 42 U.S.C. §§ 601 – 619), which is now commonly known as "welfare reform." In response thereto, in 1997 the Colorado General Assembly enacted the Colorado Works Program Act (CWPA), § 26-2-701, *et seq.*, C.R.S. This class action lawsuit arose from the application of CWPA to Respondents. The named respondents, Frances Weston, Christine Kneubehl, and Shauna Disher (formerly known as Shauna Parks), received monthly cash assistance benefits under the Temporary Assistance for Needy Families (TANF) program, as administered by the Adams County Department of Social Services (ACDSS).

Respondents' benefits were reduced by ACDSS, a practice referred to as "sanctioning," 42 U.S.C. §§ 607(e)(1) and 608(b)(3) and § 26-2-711(1)(a), C.R.S., as a result of their failure to perform work activities, have their children vaccinated, and/or cooperate with ACDSS' child support enforcement unit as required in Respondents' individual responsibility contracts (IRCs). *Findings of Fact and Conclusions of Law*, Rec.Vol. 7, pp. 1698-99.

Respondents filed a complaint in the Denver district court on January 20, 1999. *Complaint (Class Action)*, Rec.Vol. 1, pp.1-64. A first amended complaint was filed on February 19, 1999, in which Respondents alleged three claims for relief against Petitioners: 1) that ACDSS failed to provide adequate pre-deprivation notices of sanctions imposed against Respondents' TANF benefits under CWPA; 2) that such improper notices deprived Respondents

of liberty and property interests without due process of law under Article II, Section 25 of the Colorado Constitution; and 3) that such improper notice deprived Respondents of liberty and property interests without due process of law under Section 1 of the Fourteenth Amendment to the Constitution of the United States, in violation of 42 U.S.C. § 1983.[1] *First Amended Complaint (Class Action)*, Rec.Vol. 1, pp. 115-187A.

In their amended complaint, Respondents asserted the notices were inadequate as a matter of law because they failed to comply with a rule promulgated by the Colorado Department of Human Services (CDHS), 9 CCR 2503-1 at 113.22j; CDHS Staff Manual, Vol. 3, Income Maintenance, Rule 3.830.21 (hereinafter CDHS Rule 3.830.21). *First Amended Complaint (Class Action)*, *supra*, at p. 138. Respondents further asserted that such failure required that the sanctions imposed against them be set aside, pursuant to the language of CDHS Rule 3.830.21 and *Weaver v. Colorado Dep't of Social Servs.*, 791 P.2d 1230 (Colo.App.1990). *Id.* at pp. 140-1.

On March 12, 1999, Petitioners filed a motion to dismiss the amended complaint, pursuant to C.R.C.P. 12(b)(1) and (5). *Defendants Adams County Board of Social Services and Donald M. Cassata's Motion to Dismiss Plaintiffs' Amended Complaint Pursuant to C.R.C.P.*

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[1] The Colorado Department of Human Services and its executive director, and the Denver Department of Human Services and its director, were named defendants in Respondents' amended complaint. The amended complaint contained a claim for relief solely against the State defendants, i.e. failure to oversee and supervise county administration of the Colorado Works Program, upon which Petitioners took no position. *First Amended Complaint (Class Action)*, Rec.Vol. 1, pp. 138-9. In any event, the Denver defendants settled the claims against them prior to trial, and the State defendants did not join in the appeal of the judgment of the trial court. *Weston v. Cassata*, 37 P.3d 469, 473 (Colo.App.2001).

12(b)(1) and (5), Rec.Vol. 1, pp. 204-26. A hearing on the motion was held on May 28, 1999, as a result of which the trial court found it had subject matter jurisdiction over Respondents' amended complaint. *Reporter's Transcript*, Rec.Vol. 10, pp. 107-20. On June 11, 1999, pursuant to C.R.C.P. 23(b)(2), the trial court certified the class as consisting of "[a]ll participants in the Colorado Works Program in Adams County since July 1, 1997, who have been sanctioned or will be sanctioned with a reduction in benefits after failing to receive adequate notice of the proposed sanction." *Order Granting Plaintiffs' Motion for Class Certification*, Rec.Vol. 3, pp. 733-737.

Petitioners filed their answer to the amended complaint on June 7, 1999. *Defendants Adams County Board of Social Services and Donald M. Cassata's Answer and Affirmative Defenses to Plaintiffs' Amended Complaint*, Rec.Vol. 3, pp. 712-25. On September 7, 1999, Petitioners filed a motion for summary judgment, pursuant to C.R.C.P. 56, in which it was argued that Respondents had no property interest in the receipt of welfare benefits under the welfare reform measures enacted by PRWORA and CWPA, and, therefore, had not suffered a deprivation of their rights under the United States Constitution, the Colorado Constitution, or 42 U.S.C. § 1983. *Adams County Defendants' Motion for Summary Judgment*, Rec.Vol. 5, pp. 1270-72; *Adams County Defendants' Brief in Support of Motion for Summary Judgment*, Rec.Vol. 6, pp. 1273-98.

A three-day trial to the court was held in September, 1999. The trial court's judgment entered on November 5, 1999, under which the court found it had jurisdiction over Respondents' complaint pursuant to the Colorado Uniform Declaratory Judgments Law, § 13-51-101, *et seq.*, C.R.S., the Colorado Administrative Procedures Act, § 24-4-101, *et*

seq., C.R.S., and 42 U.S.C. § 1983. *Findings of Fact and Conclusions of Law*, *supra*, pp. 1698-1730.

In determining whether Respondents had a property interest in the receipt of TANF benefits, the trial court relied on *Goldberg v. Kelly*, 397 U.S. 254, 90 S.Ct. 1011 (1970) and *Board of Regents v. Roth*, 408 U.S. 564, 92 S.Ct. 2701 (1972). It noted in *Goldberg* "the U.S. Supreme Court held that public assistance benefits 'are a matter of statutory entitlement for persons qualified to receive them....[and t]heir termination involves state action that adjudicates important rights.'" *Goldberg*, *supra*, at 262, 90 S.Ct. at 1017; *Findings of Fact and Conclusions of Law*, *supra*, p. 1714. The trial court further noted that the *Roth* court found that property interests in government benefits "'are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law -- rules or understandings that secure certain benefits.'" *Roth, supra*, at 577; 92 S.Ct. at 2709; *Findings of Fact and Conclusions of Law*, *supra*, p. 1714.

The trial court then applied a "functional analysis" and concluded that, despite the "no entitlement" language contained in both PRWORA and CWPA, Respondents did have a property interest in the receipt of TANF benefits because it found the program to be mandatory in nature, to allow for no discretion concerning the payment of benefits, and to contain mandatory language regarding sanctions and the appeal process. *Findings of Fact and Conclusions of Law*, *supra*, pp. 1714-18. As stated by the trial court,

> Defendants contend that when Congress specified that benefits are not an entitlement, it intended to prevent the creation of a property interest and thereby prevent due process rights from attaching to the right of any person to receive benefits. The court rejects

> that interpretation for two reasons. First, it is inconsistent with the mandatory nature of the program...the substantive provisions of the program permit no discretion. Subject to the availability of funds, payment of cash benefits to qualified, complying participants is mandatory, thereby creating a mutually explicit understanding that supports a claim of entitlement. It would violate principles of sound statutory construction to interpret the 'no entitlement' language to negate what the substantive provisions of the statute plainly establish.
>
> Second, to the extent congress (sic) did intend to prevent due process rights from attaching, that would be constitutionally impermissible. Congress may not create a property interest by the substantive provisions of a statute but then defeat the right to due process merely by reciting that there is not entitlement. In this regard, *Cleveland Board of Educ. v. Loudermill*, 470 U.S. 532 (1985) is instructive...Interpreting the 'no entitlement' language to deprive Plaintiffs of due process in light of the otherwise mandatory nature of TANF would render those and the Colorado Works Program Act provisions of the statute unconstitutional in light of the *Loudermill* analysis. Therefore, the court finds that the 'no entitlement' language should be interpreted so as not to deprive Plaintiffs of due process.

Id. at 1716-17.

After having found that TANF program participants had a property interest in the receipt of welfare benefits and, thus, were entitled to due process when those benefits were reduced or terminated, the trial court then analyzed the

measure of process due. The court held that: 1) the notices were inadequate as a matter of law under post-*Goldberg* case law; 2) CDHS Rule 3.830.21 provided the minimum level or "floor" for the due process analysis; 3) to be adequate, the notices must be in writing; and 4) "due process requires a specific and explicit explanation of the actual conduct that has triggered a reduction or termination of benefits...." *Id.* at 1719-20.

The court then applied these standards to the five "phases" of notices issued[2] and found them all inadequate for at least two of the following reasons: 1) they failed to state the actual monetary amount of the sanction and the effect of the sanction on future sanction levels; 2) they failed to provide a sufficiently specific description of the reason for the action by failing to specifically identify the particular conduct that was in violation of the program; 3) they failed to provide a specific and accurate citation to a state regulation or county policy that permitted or required the sanction; 4) they failed to provide the effective date for the adverse action, i.e. the rollover of the sanction that ensued from a failure to cure the sanction during the first or second level of the sanction; and/or 5) the notice incorrectly stated the time for appeal as being twenty-six, rather than ninety, days. *Id.* at 1720-21.

The trial court found in favor of Respondents on all three of their claims, and ordered Petitioners to: 1) discontinue using the inadequate notices and/or sanctioning TANF participants based on the inadequate notices; and 2) to locate all class members affected by the court's order and

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[2] The trial court found that Phase I notices were issued from July, 1997 – December, 1997; Phase II notices were issued from December, 1997 – July 1998; Phase III notices were issued from July 1998 – December, 1998; Phase IV notices were issued from September, 1998 – March, 1999, and Phase V notices were issued from March, 1999 forward.

provide equitable restitution to them by reinstating their full TANF benefits.[3] *Id.* at 1728-29. Petitioners were also ordered to pay Respondents' attorney fees, in accordance with 42 U.S.C. § 1988. *Id.* at 1730.

On December 17, 1999, Petitioners filed a notice of appeal to the Colorado Court of Appeals, in which the issues raised included the issues raised in this petition. *Notice of Appeal*, Rec.Vol. 8, pp. 1919-25.

On July 5, 2001, the Court of Appeals affirmed the trial court's decision. The court began by noting,

> The Fourteenth Amendment to the United States Constitution does not create property interests, but rather guarantees procedural protections from infringement upon or denial of substantive rights that stem from an independent source, such as federal or state law. *See Board of Regents v. Roth*, 408 U.S. 564, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972)... In analyzing due process issues, courts must first determine whether the asserted property interest merits constitutional protection, and then evaluate the adequacy of the challenged process. (citation omitted).

Weston v. Cassata, 37 P.3d, 469, 474 (Colo.App.2001).

In construing the "no entitlement" language of PRWORA and CWPA, the court stated,

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[3] A class member's sixty-month lifetime limit on the receipt of TANF benefits, pursuant to 42 U.S.C. § 608 and § 26-2-706.5(1), C.R.S., would be affected by the court's order, so class members were given the option of declining the reinstatement of benefits.

> Prior to the enactment of the 1996 federal legislative changes in the welfare system, welfare recipients had a statutory entitlement to welfare benefits under AFDC – in essence, a property right subject to due process protections. *See Goldberg v. Kelly*, 397 U.S. 254, 90 S.Ct. 1101, 25 L.Ed.2d 1987 (1970) (describing welfare benefits as 'property'). However, with the enactment of PRWORA, Congress stated that there no longer would be any individual entitlement to welfare benefits. *See* 42 U.S.C. § 601(b). In doing so, Congress intended to eliminate the 'entitlement mentality' behind the existing welfare system by removing individual entitlement to cash benefits and making welfare benefits more temporary and conditional.

Id. at 474-75.

The court further stated,

> We do not dispute defendants' assertion that courts should give effect to the words contained in the statute according to their plain and ordinary meaning. *See Farmers Group, Inc. v. Williams*, 805 P.2d 419 (Colo.1991). Both the federal and state statutes clearly state that there shall be 'no entitlement' to welfare benefits. Defendants argue that the clear 'no entitlement' language should be read to negate any and all property rights to welfare benefits. Although we agree that the 'no entitlement' language modifies the unconditional entitlement to welfare benefits previously available under the AFDC program, we do not agree that it vitiates all forms of property rights in welfare benefits.

Id. at 475.

The court then found there is a sliding scale or "spectrum" of property rights and, while some property rights may not be absolute, they nonetheless invoke due process protection. *Id.* In so doing, the court stated,

> [A] less absolute notion of property rights relates to property allocated on the basis of a regulatory scheme. Such a regulatory scheme, which contains discretion-constraining standards, invokes constitutional due process protection...
>
> In *Roth*, the United States Supreme Court tied the determination of this type of 'property interest' to the degree of discretion vested in an official decisionmaker to withhold the benefit or impose the burden...Thus, if the statutory scheme comprehensively sets forth the conditions under which claims of entitlement attach, and the individual meets those conditions, the official decisionmaker merely acts as a conduit for distribution of welfare benefits. In such a situation, the potential recipient's compliance with the statutory standards, rather than the decision of an official, gives rise to the welfare benefit.

Id. at 476.

The court found that "[d]espite the forcefulness and apparent specificity of the 'no entitlement' language, the construction of the remainder of the welfare statutory scheme illustrates that the federal government did not, and constitutionally could not, eliminate all forms of entitlement to welfare benefits." *Id.* The court further noted,

> Although the government unambiguously expressed an intent to do away with the absolute entitlement to welfare benefits previously available under the AFDC program it did not intend to eliminate welfare benefits altogether, but merely to create a more conditional property right in the receipt of federal benefits and to make the requirements of attaining a property right in those benefits more rigorous.

Id. at 477.

The court then held that "because plaintiffs had a property right, albeit not an unlimited one, in continued receipt of welfare benefits, Plaintiffs were constitutionally entitled to procedural due process." *Id.*

In determining the process due, the court found that "[if] an administrative regulation sets forth the minimum standards for notice requirements, those standards serve as the minimum notice required for due process." *Id.* (citation omitted). Accordingly, the court found that CDHS Rule 3.830.21 contained the necessary components of adequate notice, and held that the notices issued to Respondents were legally insufficient. *Id.* at 478. Therefore, the court found Respondents' procedural due process rights had been infringed in violation of 42 U.S.C. § 1983.

REASONS FOR ALLOWANCE OF WRIT

The Colorado Court of Appeals has decided an important federal question in a manner inconsistent with this Court's precedents and in contravention of the clear legislative intents of Congress and the Colorado General Assembly.

With the enactment of PRWORA, Congress engendered a massive overhaul of the federal and state welfare systems. Both the trial and appellate courts minimized the significance of PRWORA by characterizing it merely as an attempt to make attaining welfare benefits a bit more rigorous. *Findings of Fact and Conclusions of Law*, *supra*, pp.18-20; *Weston*, *supra*, at 475-6. Additionally, both courts misconstrued TANF as being a program under which it continues to be mandatory that cash assistance be granted to individuals and families that meet financial eligibility requirements, as was generally the case under the Aid to Families with Dependent Children (AFDC) program. *Id.*

An accurate reading of PRWORA makes it plain that the fundamental nature of welfare benefits in this country has changed. Pursuant to the TANF block grant funding scheme, Congress has devolved substantial authority and flexibility to the States to develop programs to "end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage." 42 U.S.C. 601(a). To make its intent patently clear, Congress proclaimed that, unlike the AFDC program, the TANF program "*shall not be interpreted to entitle any individual or family to assistance under any State program funded under this part.*" 42 U.S.C. § 601(b) (emphasis added). In conformance with PRWORA, throughout CWPA, the Colorado General Assembly has also expressly and unambiguously declared that nothing under CWPA, or any rules promulgated thereunder, shall be interpreted as creating a legal entitlement to welfare. *See* §§ 26-2-704, 26-2-706.5(3)(b), 26-2-708(3), 26-2-708.5, and 26-2-716, C.R.S.

To receive TANF funds, a State must submit to the United States Department of Health and Human Services a

plan that outlines how the State intends, among other things, to 1) "conduct a program, designed to serve all political subdivisions in the State (not necessarily in a uniform manner), that provides assistance to needy families with children and provides parents with job preparation, work, and support services to enable them to leave the program and become self-sufficient;" 2) require those receiving assistance to engage in work once the State determines the parent is ready to work or the parent has received assistance for 24 months, whichever is earlier; 3) ensure that parents receiving assistance engage in work activities; and 4) develop "objective criteria for the delivery of benefits and the determination of eligibility and for fair and equitable treatment, including an explanation of how the State will provide opportunities for recipients who have been adversely affected to be heard in a State administrative or appeal process." 42 U.S.C. § 602.

As a condition of receiving federal TANF funding, a State must 1) meet historic levels of funding, known as "maintenance of effort," by annually appropriating to its TANF program at least 80% of the amount spent on AFDC and related programs in the early 1990's, 42 U.S.C. § 609(a)(7); 2) meet work participation rates in that a certain percentage of single and two-parent families receiving assistance must participate in work activities, 42 U.S.C. § 607; and 3) not grant assistance to any person who has received cash assistance under TANF from or in any State for more than 60 months during his or her adult lifetime. 42 U.S.C. § 608. If a State fails to comply with these provisions, it will suffer a reduction in its annual federal block grant. *See* 42 U.S.C. §§ 603(a)(3)(F) and 609.

Additionally, under TANF, States may elect to require recipients of monthly cash assistance benefits to develop an individual responsibility plan (IRP) "that sets

forth the employment goals and obligations of the individual and is designed to move the recipient into private sector employment as quickly as possible." 42 U.S.C. § 608(b). Colorado has elected to require this of its TANF recipients, but the IRP is called an "individual responsibility contract (IRC). § 26-2-708, C.R.S. If a recipient refuses to engage in work, "the State shall either reduce the amount of assistance otherwise payable to the family pro rata or terminate such assistance, subject to such good cause and other exceptions as the State may establish." 42 U.S.C § 607(e)(1). If a recipient fails without good cause to comply with the IRP, the State may reduce, by such an amount as the State considers appropriate, the amount of assistance paid to the recipient, in addition to any other penalties required under the State program. The exercise of this sanctioning authority is solely within the discretion of the State. 42 U.S.C. § 608(b)(3).

Based on the unambiguous "no entitlement" language contained in PRWORA and CWPA, coupled with the broad discretion Congress gave the States (and Colorado gave its counties, § 26-2-705, C.R.S.) to design their own uniquely tailored TANF programs, the appellate court erred in affirming the trial court's order.

The trial and appellate courts also erred in concluding it would be unconstitutional to give the statutory "no entitlement" language its plain meaning. In doing so, both courts misconstrued *Cleveland Board of Educ. v. Loudermill*, 470 U.S. 532, 105 S.Ct. 1487 (1985), which does not stand for the principle that the legislative branch of government is barred from restricting property interests in the public benefits it creates. Rather, *Loudermill* affirms the approach to property rights advocated by the *Goldberg* and *Roth* courts. That is, if a statute creates a property interest in a public benefit or employment, the State cannot then

deprive an individual of that right without due process of law. *See also Gilbert v. Homar*, 520 U.S. 924, 117 S.Ct. 1807 (1997). It is most certainly within the constitutional authority of the legislative branch of government to decline to provide a property interest, and hence 42 U.S.C. §§ 1983 or 1988 remedies, in the benefits it affords its citizens. *Roth, supra*, at 577, 92 S.Ct. at 2709.

Nonetheless, if Respondents do have a constitutionally protected property interest in the receipt of cash assistance benefits under welfare reform, as the appellate court held, the court erred in its analysis of the measure of process due. Despite the court's holding that welfare recipients under welfare reform have a diminished property interest in those benefits, it went on to hold that recipients could not be deprived of those benefits without a fuller measure of process than they were due under the AFDC program. In affirming the trial court's order, the appellate court held that not only must sanction notices comply with CDHS Rule 3.380.21, but they must also contain the exact monetary amount of the sanction and the exact monetary effect that sanction may have on any future sanctions. *Findings of Fact and Conclusions of Law*, *supra*, pp. 1721-25.

This expansive holding goes far beyond the due process necessitated under welfare reform and does not comport with the three-part analysis required by *Mathews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893 (1976). The fundamental requisites of due process are notice and an opportunity to be heard. *Goldberg*, *supra*, at 267, 90 S.Ct. at 1020. As noted by this Court in *Morrissey v. Brewer*, 408 U.S. 471, 481, 92 S.Ct. 2593, 2600 (1972), "due process is flexible and calls for such procedural protections as the particular situation demands." Further, "[i]t is by now well established that 'due process,' unlike some legal rules, is not

a technical conception with a fixed content unrelated to time, place and circumstances." *Cafeteria & Restaurant Workers v. McElroy,* 367 U.S. 886, 895, 82 S.Ct. 1743, 1748 (1961). *See also Gilbert, supra* at 930, 117 S.Ct. at 1812.

To determine what process is constitutionally due, courts should balance three distinct factors: "First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest." *Mathews, supra,* at 335, 96 S.Ct. at 903. Rather than truly balancing these factors in light of welfare reform, the appellate court simply concluded that the objective, detail-intensive notice standard it established in *Weaver, supra,* which was a pre-PRWORA case involving medical benefits, was the measure of process constitutionally due.

In so doing, the appellate court ignored the fact that it is mandatory under Colorado law that TANF recipients be given notice "in bold print" at the beginning of their IRCs that their benefits may be reduced or terminated if they fail to comply with the terms of the IRC. § 26-2-708(3)(b), C.R.S. Additionally, despite the inadequacies of the written notices sent to recipients who received TANF cash assistance from ACDSS, those recipients who testified at trial all admitted that they were fully aware of their appeal rights. *Reporter's Transcript,* Rec.Vol. 13, pp. 174-91 and 211-30; *Reporter's Transcript,* Rec.Vol. 14, pp. 107-26 and 159-75; *Reporter's Transcript,* Rec.Vol. 15, pp. 174-91.

Finally, because Respondents alleged a procedural due process violation under 42 U.S.C. § 1983, rather than a substantive one, both the trial and appellate courts erred in not applying the *Parrat-Hudson* doctrine, which instructs

that such a claim can only be maintained if there is no adequate remedy under state law. *Parrat v. Taylor*, 451 U.S. 527, 101 S.Ct. 1908 (1981); *Hudson v. Palmer*, 468 U.S. 517, 104 S.Ct. 3194 (1984). Although both the trial and appellate courts held that Respondents were not required to exhaust the remedies available under the Colorado Administrative Procedures Act, § 24-4-101, *et seq.*, C.R.S., prior to pursuing a 42 U.S.C. § 1983 claim, both courts ignored the fact that Respondents could have received the relief they sought, with the exception of attorneys fees, under the Colorado Uniform Declaratory Judgments Law, § 13-51-101, *et seq.*, C.R.S. Because such relief was available, the Colorado Court of Appeals erred in upholding Respondents' 42 U.S.C. § 1983 claim.

The Colorado Court of Appeals erred in holding that, despite the express and unambiguous "no entitlement" language contained in PRWORA and CWPA, Respondents had a property interest in the receipt of TANF cash assistance benefits, and erred in upholding Respondents' 42 U.S.C. §§ 1983 and 1988 claims.

Respectfully submitted,

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APPENDIX

APPENDIX A

Colorado Court of Appeals,
Div. I.

Frances F. WESTON, Christine M. Kneubehl, and Shauna Parks, n/k/a Shauna Disher, on behalf of themselves and all others similarly situated,
Plaintiffs-Appellees,

v.

Donald M. CASSATA, Director of the Adams County Department of Social Services, in his official capacity; and Adams County Board of Social Services,
Defendants-Appellants.

No. 99CA2449.

July 5, 2001.
Certiorari Denied Jan. 14, 2002.*

Public benefits recipients brought class action against state and county, seeking declaratory judgment to determine validity of pretermination sanction notices issued under Temporary Assistance to Needy Families program. The District Court, City and County of Denver, Lawrence A. Manzanares, J., found that notices did not meet statutory requirements and that state and county had failed to provide due process to recipients. The county appealed. The Court of Appeals, Davidson, J., held that: (1) county's role in administration of public assistance benefits gave county sufficient responsibility to be considered a "person" for purposes of § 1983 class action; (2) benefits recipients had property right in continued receipt of welfare benefits; (3) pretermination notices sent by county were insufficient and, thus, deprived recipients of due process; and

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* Justice COATS does not participate.

(4) recipients were not required to exhaust administrative remedies.

Affirmed.

Opinion by Judge DAVIDSON.

In this class action brought to determine the validity of sanction notices issued under Colorado's program for Temporary Assistance to Needy Families, defendants, Donald M. Cassata, Director of the Adams County Department of Social Services, and the Adams County Board of Social Services, appeal from the judgment in favor of plaintiffs, Frances F. Weston, Christine M. Kneubehl, and Shauna Disher, on behalf of themselves and all others similarly situated. We affirm.

The Welfare Reform Act of 1996, also known as the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), 42 U.S.C. § 601, et seq., brought about extensive changes in welfare law. Among other changes, it repealed the Aid to Families with Dependent Children (AFDC) program and instituted the Temporary Assistance to Needy Families (TANF) program. Unlike AFDC, which provided recipients with benefits as long as they were eligible, TANF limits welfare benefits to sixty months for eligible adult care-providers of a family unit.

Funding for TANF assistance, like funding for AFDC before it, comes partly from federal monies disbursed to the states. Under TANF, however, receipt of these federal block grants is conditioned in part on the states' enacting legislation limiting welfare relief to recipients who comply with the more rigorous requirements of the new welfare system.

In 1997, in accordance with PRWORA, Colorado enacted the Colorado Works Program Act (CWPA), § 26-2-701, *et seq.*, C.R.S.2000. Under this program, participants receive funds "subject to available appropriations" as long as they

comply with program requirements. *See* § 26-2-709(1)(a), C.R.S.2000. Counties are required to provide funds to eligible recipients as long as funds are available. *See* Colorado Department of Human Services, Agency Letter AFDC- 97-12-A (July 3, 1997). The Colorado Department of Human Services (CDHS), charged with responsibility for overseeing administration of the CWPA, develops standardized forms for the counties to use in streamlining their works program applications, services, and tracking of participants. Section 26-2- 712(5)(a), C.R.S.2000.

Participants in the TANF program are required to enter into an Individual Responsibility Contract (IRC), which outlines the program requirements. Section 26-2-708, C.R.S.2000. Individual counties will sanction participants who fail to comply with TANF IRC requirements, and that sanction is in the form of a reduction of their cash assistance. Section 26-2- 711(2), C.R.S.2000. Before a participant is sanctioned, however, the participant must receive a sanction notice stating the basis for the county's decision or action, detailing the participant's rights to a county conference under the dispute resolution process and to a state-level appeal, and describing the process of such an appeal. Section 26-2-127(1)(a)(I), C.R.S.2000; CDHS Manual § 3.830, 9 Code Colo. Regs. 2503-1.

All members of the plaintiff class are or were recipients of welfare benefits in Adams County under the revised welfare system administered by defendants; all were sent sanction notices by the Adams County Department of Social Services. The individual plaintiffs who received sanction notices were given the right to dispute the sanction at a local or state level. However, the various sanction notices did not include full or accurate information about the sanctions and the appeal process. Testimony given at trial illustrated *473 that defendants pursued a policy of consistently reinstating benefits

to recipients who disputed their sanctions, yet defendants continued to use the defective notices.

Plaintiffs brought this class action to determine whether the sanction notices were insufficient. Specifically, pursuant to the Uniform Declaratory Judgments Law, § 13-51-101, *et seq.*, C.R.S.2000, the Administrative Procedure Act (APA), § 24-4-101, et seq., C.R.S.2000, and 42 U.S.C. § 1983, plaintiffs sought a declaration that the sanction notices were inadequate as a matter of law, an injunction barring use of the inadequate notices, reversal of the sanctions, and restitution of amounts withheld under the inadequate notice scheme. Plaintiffs also sought attorney fees pursuant to 42 U.S.C. § 1988.

The named defendants in the original lawsuit included the Denver Department of Social Services; Philip A. Hernandez, Manager of the Denver Department of Social Services; the Colorado Department of Human Services; Marva Livingston Hammons, Executive Director of the Colorado Department of Human Services. The Denver defendants settled with plaintiffs prior to trial. The State defendants are not party to this appeal.

After a bench trial, the court found in favor of plaintiffs. Specifically, the court found that none of the five versions of sanction notices sent by defendants to noncomplying participants between July 1997 and November 1999 met statutory or regulatory requirements. Moreover, the court found that defendants failed to provide due process to plaintiffs, in violation of both the state and the federal constitutions.

Accordingly, the trial court declared all notices provided to plaintiffs inadequate as a matter of law, enjoined defendants from using such notices, ordered reversal and removal of all records of previous sanctions based on inadequate notices, and ordered defendants equitably to restore the cash assistance benefits improperly withheld from plaintiffs under the inadequate notice scheme.

I.

Defendants contend that the trial court incorrectly refused to dismiss plaintiffs' claims brought pursuant to 42 U.S.C. § 1983. Specifically, they argue that the court erred in determining that defendants' actions had deprived plaintiffs of procedural due process. We disagree.

To prevail on a § 1983 claim, plaintiffs must show that: (1) A person (2) acting under color of state law (3) subjected plaintiffs or caused plaintiffs to be subjected to (4) the deprivation of a right secured by the constitution or the laws of the United States. *County of Adams v. Hibbard,* 918 P.2d 212, 217 (Colo.1996).

We review matters of statutory construction *de novo. Canal Ins. Co. v. Nix,* 7 P.3d 1038 (Colo.App.1999).

A.

Initially, we address defendants' argument that they are not "persons" and therefore may not be sued under § 1983. We disagree.

In an action for monetary damages brought pursuant to § 1983, the states, state officers acting in their official capacities, and local entities considered "arms of the state" are not "persons" and therefore are not subject to suit. *See Will v. Michigan Dep't of State Police,* 491 U.S. 58, 109 S.Ct. 2304, 105 L.Ed.2d 45 (1989); *Simon v. State Comp. Ins. Auth.,* 946 P.2d 1298 (Colo.1997). Thus, county departments of social services and their employees have been held not subject to suit for damages under § 1983. *See Wigger v. McKee,* 809 P.2d 999 (Colo.App.1990).

In contrast, official-capacity actions for prospective relief are not treated as actions against the state. *See Will v. Michigan Dep't of State Police, supra.* Thus, in actions for declaratory or injunctive relief, such as here, government

entities and their officers are properly considered "persons" under § 1983 so long as they are responsible for the implementation and enforcement of a state statute. *See Jackson v. State,* 966 P.2d 1046 (Colo.1998).

Here, the plain language of the Colorado Human Services Code, § 26- 1-101, et *474 seq., C.R.S.2000, and the CWPA, clearly delineates responsibilities for both the state and county agencies.

CDHS is responsible for overseeing the implementation of the works program statewide, *see* § § 26-1-111(2)(a), 26-2-711(1), 26-2-712(5)(a), (e), 26-2-715(2)(3), C.R.S.2000, including, inter alia, prescribing such forms as it may deem necessary, *see* § 26-1-111(2)(e), C.R.S.2000, and developing standardized forms for the counties' use. *See* § 26-2-712(5)(a). To facilitate the counties' use of forms, the state maintains the Client Oriented Information Network (COIN) database, which contains a series of codes describing the activities giving rise to sanction and is available for use by the counties in preparing their sanction notices.

The county departments serve as agents of CDHS and administer public assistance in accordance with its rules and regulations. *See* § 26-1- 118(1), C.R.S.2000. Under state regulations, the counties must give adequate and timely notice of any action adversely affecting a participant's welfare benefits. *See* CDHS Manual § § 3.830.2, 3.830.21-.22, 9 Code Colo. Regs. 2503- 1. In doing so, Adams County utilizes the sanction forms developed by the state and uses the COIN program in completing the sanction forms.

We disagree with defendants that under this scheme, and because of the oversight role given to the state, they are not responsible for implementation and enforcement of the statute. One of the expressly stated purposes of the CWPA is to permit counties to have "increased responsibility for the administration of the works program." *See* § 26-2-705(2)(c),

C.R.S.2000. The county's role in administration of benefits and the specific duties mandated by statute give the county more than sufficient responsibility to be considered a "person" for the purposes of suit under § 1983.

B.

Defendants' primary argument is that plaintiffs were not deprived of due process under the notice scheme.

Both the United States and Colorado Constitutions prohibit the deprivation of "property" without due process of law. U.S. Const. amend XIV, § 1; Colo. Const. art. II, § 25. The Fourteenth Amendment to the United States Constitution does not create property interests, but rather guarantees procedural protections from infringement upon or denial of substantive rights that stem from an independent source, such as federal or state law. *See Board of Regents v. Roth,* 408 U.S. 564, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972).

In analyzing due process issues, courts must first determine whether the asserted property interest merits constitutional protection, and then evaluate the adequacy of the challenged process. *See Watso v. Colorado Dep't of Social Services,* 841 P.2d 299 (Colo.1992).

1.

Defendants first assert that plaintiffs have no property interest in welfare benefits. We disagree.

Prior to the enactment of the 1996 federal legislative changes in the welfare system, welfare recipients had a statutory entitlement to welfare benefits under the AFDC--in essence, a property right subject to due process protections. *See Goldberg v. Kelly,* 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970)(describing welfare benefits as "property"). However, with the enactment of PRWORA, Congress stated that there no longer would be any individual entitlement to

welfare benefits. *See* 42 U.S.C. § 601(b). In doing so, Congress intended to eliminate the "entitlement mentality" behind the existing welfare system by removing individual entitlement to cash benefits and making welfare benefits temporary and conditional. *See* H.R.Rep. No. 104-651 (1996); Michelle L. VanWiggeren, *Experimenting with Block Grants & Temporary Assistance: The Attempt to Transform Welfare by Altering Federal- State Relations & Recipients' Due Process Rights,* 46 Emory L.J. 1327 (1997).

PRWORA states, in pertinent part: "No individual entitlement. This part ... shall not be interpreted to entitle any individual or family to assistance under any State program funded under this part...." *475 42 U.S.C. § 601(b). Similarly, CWPA, the Colorado statute implementing the federal statute, states: "Nothing in this part 7 or in any rules promulgated pursuant to this part 7 shall be interpreted to create a legal entitlement in any participant to assistance provided pursuant to the works program." Section 26-2-704(1), C.R.S.2000.

Its "no entitlement" language notwithstanding, the state statutory scheme nevertheless contains mandatory language concerning the payment of available funding to eligible participants, *see* § 26-2-709(1)(a), C.R.S.2000 ("Except as provided in this part 7 and subject to available appropriations, a participant *shall* receive a basic assistance grant...."); § 26-2-710(3), C.R.S.2000 ("participant *shall* continue to receive the basic cash assistance grant" during pendency of an appeal), and the issuance of sanction notices. *See also* CDHS Manual § 3.830, 9 Code Colo. Regs. 2503-1 (an applicant is "*entitled* to receive prior written notice of any agency action affecting his/her eligibility for or receipt of benefits or service").

To have a property interest in a government benefit, a person must have more than a unilateral expectation--he or she must have a "legitimate claim of entitlement to it." Entitlements derive from "an independent source such as state

law–rules or understandings that secure certain benefits and that support claims of entitlement to those benefits." *Board of Regents v. Roth, supra,* 408 U.S. at 577, 92 S.Ct. at 2709, 33 L.Ed.2d at 561.

In construing a statute, we must read it in context and in a manner that gives effect to the statute as a whole. *See City of Greenwood Village v. Petitioners for Proposed City of Centennial,* 3 P.3d 427 (Colo.2000). We may not read the statute in a manner that renders it unconstitutional. *See Buckley v. Chilcutt,* 968 P.2d 112 (Colo.1998).

Here, in a thorough and well-reasoned ruling, the trial court rejected defendants' argument that the "no entitlement" language in the statute precluded the creation of a property interest in welfare benefits. We agree.

The court found defendants' interpretation to be inconsistent with the mandatory nature of the welfare program, and concluded that the "no entitlement" language did not pertain to entitlement at an individual level, but rather to the notion that availability of block grants to states was subject to the availability of federal funds. Additionally, the trial court noted that it would be constitutionally impermissible to create property interests that could be defeated simply by stating in the statute that there was "no entitlement."

We do not dispute defendants' assertion that courts should give effect to the words contained in the statute according to their plain and ordinary meaning. *See Farmers Group, Inc. v. Williams,* 805 P.2d 419 (Colo.1991). Both the federal and state statutes clearly state that there shall be "no entitlement" to welfare benefits. Defendants argue that the clear "no entitlement" language should be read to negate any and all property rights to welfare benefits. Although we agree that the "no entitlement" language modifies the unconditional entitlement to welfare benefits previously available under the

AFDC program, we do not agree that it vitiates all forms of property rights in welfare benefits.

Along the spectrum of property rights between absolute entitlement, such as that previously available under the AFDC program, and no entitlement at all, such as that urged by defendants' interpretation of the statute, lies an area of property rights that, while not absolute, invokes due process protection. Accordingly, we explore the several notions of entitlement underlying property rights in welfare benefits.

On the "absolute" entitlement end of the spectrum, there is the notion of a property right that creates a right of action to sue the state under certain "entitlement programs." *See King v. Smith,* 392 U.S. 309, 88 S.Ct. 2128, 20 L.Ed.2d 1118 (1968). Under the AFDC program, individuals, by virtue of having a property right in welfare benefits, could sue the state to enforce their rights. *See Goldberg v. Kelly, supra.*

In a related concept, the political and fiscal notion of "entitlement" requires states, in order to receive matching funds from the federal government, to comply with federal *476 guidelines and then to provide the necessary funding to all eligible participants.

Another, less absolute notion of property rights relates to property allocated on the basis of a regulatory scheme. Such a regulatory scheme, which contains discretion-constraining standards, invokes constitutional due process protection. *See Board of Regents v. Roth, supra; Washington Legal Clinic for Homeless v. Barry,* 107 F.3d 32 (D.C.Cir.1997)(property rights may arise from administrative "rules or understandings"); *see also Mallette v. Arlington County Employees' Supplemental Retirement System II,* 91 F.3d 630 (4th Cir.1996); *Griffeth v. Detrich,* 603 F.2d 118 (9th Cir.1979)(construing mandatory statutory language to give rise to an entitlement). *See generally* Cynthia R. Farina, *Welfare Reform Symposium on Misusing "Revolution" & "Reform": Procedural Due Process*

& the New Welfare Act, 50 Admin. L.Rev. 591 (1998) (discussing the foregoing notions of entitlement).

In *Roth,* the United States Supreme Court tied the determination of this type of "property interest" to the degree of discretion vested in an official decisionmaker to withhold the benefit or impose the burden. There, the *Roth* Court, referring to *Goldberg v. Kelly, supra,* stated that the welfare recipients' claims of entitlement were "grounded in the statute defining eligibility for them." *Board of Regents v. Roth, supra,* 408 U.S. at 577, 92 S.Ct. at 2709, 33 L.Ed.2d at 561. Thus, if the statutory scheme comprehensively sets forth the conditions under which claims of entitlement attach, and the individual recipient meets those conditions, the official decisionmaker merely acts as a conduit for distribution of welfare benefits. In such a situation, the potential recipient's compliance with the statutory standards, rather than the decision of an official, gives rise to the welfare benefit.

In *Washington Legal Clinic for Homeless v. Barry, supra,* the federal circuit court reconfirmed that the less discretion the state official has to determine a benefit, the more likely the benefit is a "property right." Based on that reasoning, the court determined that, because discretion for allocation of available shelter was in the hands of administrators, the emergency shelter program in question did not create an entitlement.

In a similar vein, a property right also may depend on whether, absent the alleged denial of due process, there is either a certainty or a very strong likelihood that an application would have been granted. *See Yale Auto Parts, Inc. v. Johnson,* 758 F.2d 54 (2d Cir.1985)(examining entitlement in the context of petitioner's likelihood of obtaining a certificate of location approval).

When the federal government enacted the 1996 welfare reform laws, its purposeful inclusion of "no entitlement" in the

plain language of the statute indicated an intent to dispose of an individual's absolute entitlement to welfare benefits. However, because we must interpret a statute in its entirety, *see City of Greenwood Village v. Petitioners for Proposed City of Centennial, supra,* we may not, as defendants urge, end our analysis with that single phrase. Despite the forcefulness and apparent specificity of the "no entitlement" language, the construction of the remainder of the welfare statutory scheme illustrates that the federal government did not, and constitutionally could not, eliminate all forms of entitlement to welfare benefits.

The current structure of the block grant program provides, in essence, that the federal government may or may not disburse funds to states for welfare purposes, depending on whether funds are available. If funds are available, the federal government may further condition disbursement of funds on whether states have complied with the conditions set forth in federal welfare legislation. The government is not obligated to allocate funds to the states and has a wide degree of discretion in deciding whether to allocate funds.

At that stage of the process, a participant's right to welfare benefits has not yet matured into a personal "entitlement." The federal government may decide not to make funding available to the states for welfare programs, and may withhold funding from states that fail to follow federal standards. In either of these situations, individuals expecting welfare benefits cannot sue the states for benefits *477 not given. However, once a state, having enacted the legislation required by federal statute, receives a federal block grant for the express purpose of distribution as welfare benefits, welfare recipients will receive the money if they comply with the statutory standards.

Here, the record indicates that both state and county officials conceded that participants in the program have the right to receive cash assistance benefits if such benefits are

available and that, if participants are eligible, the county must make such payments.

Accordingly, we conclude that, once welfare recipients have complied with statutory standards and have begun receiving welfare benefits, the right to welfare benefits is a property right that cannot be compromised without procedural due process protections. If money has been allocated by the federal government to the state, and if a participant meets the criteria set forth by statute, defendants have no discretion to determine whether that participant should receive welfare benefits. *See Board of Regents v. Roth, supra.* Despite the state officials' active role in distributing welfare monies, that role has no discretionary component beyond the authority to withhold or distribute benefits according to statute.

Thus, the due process right under the new scheme is not "the guarantee of getting the benefit," but rather the guarantee that, if and when the benefit is granted, the "government will employ a decisionmaking protocol reasonably likely to yield correct application of the legally relevant substantive criteria to the individual case." Farina, *supra,* 50 Admin. L.Rev. at 622. Although the government has unambiguously expressed an intent to do away with the absolute entitlement to welfare benefits previously available under the AFDC program, it did not intend to eliminate welfare benefits altogether, but merely to create a more conditional property right in the receipt of federal benefits and to make the requirements of attaining a property right in those benefits more rigorous.

Furthermore, the General Assembly may not constitutionally authorize the deprivation of a property interest, once conferred, without appropriate procedural safeguards. *See Cleveland Board of Education v. Loudermill,* 470 U.S. 532, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985); *Washington Legal Clinic for Homeless v. Barry, supra,* 107 F.3d at 38 (expressing doubt that "blanket 'no-entitlement' disclaimers can by

themselves strip entitlements from individuals in the face of statutes or regulations unequivocally conferring them"). Consistent with that principle, federal regulations still require that hearings at the state agency level "shall meet the due process standards set forth in the U.S. Supreme Court decision in *Goldberg v. Kelly.*" 45 C.F.R. § 205.10(a)(1)(ii) (2001).

Accordingly, we conclude that because plaintiffs had a property right, albeit not an unlimited one, in continued receipt of welfare benefits, plaintiffs were constitutionally entitled to procedural due process.

2.

Defendants also argue that, because under *Goldberg v. Kelly, supra,* a pretermination notice merely need provide timely and adequate notice detailing the reasons for a proposed termination, the Adams County notices were more than adequate. We disagree.

If an administrative regulation sets forth the minimum standards for notice requirements, those standards serve as the minimum notice required for due process. *See Dep't of Health v. Donahue,* 690 P.2d 243 (Colo.1984). A notice of adverse action that fails to comply substantially with federal and state requirements cannot provide the basis for a deprivation of benefits. *See Weaver v. Colorado Dep't of Social Services,* 791 P.2d 1230 (Colo.App.1990).

According to the state regulation, necessary components of an adequate notice require that:

> A. The notice must be in writing; and,
>
> B. It must describe clearly in terms that are understandable to the applicant or recipient the action to be taken and the reason(s) for the action; and,

*478 C. It must refer specifically by number to the section(s) of the State Department's rules and/or in the Colorado Works Program, the county's official written policy(s) that require or permit the action be taken, or cite the specific changes in federal or state law requiring the action; and,

D. It must state the effective date of the proposed action; and,

E. It must explain the individual's right to request a local level dispute resolution conference and state level fair hearing, the time period for requesting a conference or hearing, and the steps which must be taken to obtain a conference or hearing; and,

F. It must explain the recipient's right to continued benefits and the obligation to repay if it is determined that the recipient was not entitled to receive them; and,

G. It must inform the individual of his/her right to be represented or assisted by legal counsel, a relative, a friend or a spokesperson of his/her choosing.

H. To the extent practicable, notice shall be in his/her primary language. If s/he is illiterate, the action shall also be explained verbally.

CDHS Manual § 3.830.21, 9 Code Colo. Regs. 2503-1.

The trial court found all Adams County notices to be inadequate under this regulation. The court made particularized findings as to the respective shortcomings of five different phases of sanction notices issued between July 1997 and November 1999.

Phase I notices failed to state the actual amount of the sanction, failed to describe the effect of the sanction on future

benefit levels, failed to provide a sufficiently specific reason for the sanction, failed to provide a citation to the enabling regulation, and incorrectly stated that the participant had only twenty-six, instead of ninety, days to appeal. Phase II notices contained all the same errors as Phase I notices and also failed to provide the effective date for the rollover of the sanction. Phase III notices contained all the same errors as Phase II notices, with the exception of the incorrect statement that the participant had only twenty-six days to appeal.

Phase IV notices failed to state the amount or effect of the sanction, to provide a sufficiently specific reason for the sanction, and to provide an effective date for the rollover of the sanction. Finally, Phase V notices contained the same deficiencies as Phase IV notices, with the exception of the failure to provide an effective date for the rollover.

In summary, the trial court found that all the sanction notices failed to state the amount of the sanction and a sufficiently specific reason for the action taken. Specifically, the court held inadequate as a matter of law the sanction notices stating the appeal period to be twenty-six days, rather than ninety days. Generally, the court found that defendants failed to comply with CDHS regulations.

The record demonstrates that the notices contained the patent deficiencies noted by the trial court. Accordingly, we conclude that the legal insufficiency of the notices deprived plaintiffs of due process of law.

II.

Defendants also contend that, because plaintiffs failed to pursue or exhaust all available administrative remedies, the trial court lacked subject matter jurisdiction over plaintiffs' state claims under the Colorado APA and the declaratory judgments law. We disagree.

Exhaustion of administrative remedies is not required when it is "clear beyond a reasonable doubt" that further administrative review by the agency would be futile because the agency will not provide the relief requested. *See State v. Golden's Concrete Co.*, 962 P.2d 919 (Colo.1998). Also, when a practice is aimed at avoiding the possibility of judicial review, there is no requirement of exhaustion. *See Ellis v. Blum*, 643 F.2d 68 (2d Cir.1981).

We note that the administrative law system is geared toward individuals and authorized to hear and resolve individual appeals. *See* CDHS Manual § 3.850.1, 9 Code Colo. Regs. 2503-1.

In denying defendants' motion, the court stated that, because defendants maintained a practice of reinstating welfare benefits to *479 those sanctioned recipients who appealed, the possibility of judicial review on the issue of adequacy of notice never materialized.

The record supports the court's finding that individuals who appealed a sanction received reinstatement of welfare benefits. Although individual plaintiffs had a process by which to contest their personal sanction in a particular situation, we agree with the trial court that defendants' practice of uniformly reinstating welfare benefits foreclosed individual plaintiffs from the opportunity to contest the inadequacy of sanction notices in general.

Furthermore, the record illustrates that defendants consistently refused to modify the insufficient sanction notices, even in the face of administrative decisions that the notices were inadequate. Defendants insisted that the insufficiency of notices was the state's, not the county's, concern.

By bringing this class action, plaintiffs sought to remedy not their own personal deprivation of benefits, but the inadequacy of the notice system in general. The inadequacy

of the sanction notices presented a concern distinct from those of individual claimants, and thus an issue broader in scope than the questions the administrative review process is permitted to address. *See* CDHS Manual § 3.850.1, 9 Code Colo. Regs. 2503.1. Although the administrative framework provides relief for individuals, we agree with the trial court that such remedies could not provide the sort of classwide relief sought by plaintiffs in this case.

The judgment is affirmed.

Judge METZGER and Judge ROY concur.

APPENDIX B

DISTRICT COURT,
CITY AND COUNTY OF DENVER, COLORADO

Case No. 99 CV 412, Courtroom 18

FINDINGS OF FACT AND CONCLUSIONS OF LAW

FRANCES F. WESTON, MAVIS FELICIA LEVY, and CHRISTINE MARIE KNEUBEHL, SHAUNA PARKS, and SHIRLEY GADISON, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

MARVA LIVINGSTON HAMMONS, Executive Director of the Colorado Department of Human Services, in her official capacity; THE COLORADO DEPARTMENT OF HUMAN SERVICES; DONALD M. CASSATA, Director of the Adams County Department of Social Services, in his official capacity; THE ADAMS COUNTY DEPARTMENT OF SOCIAL SERVICES; PHILIP A. HERNANDEZ, Manager of the Denver Department of Social Services, in his official capacity; and THE DENVER DEPARTMENT OF SOCIAL SERVICES,

Defendants.

This matter came on for trial to the court on September 28, 1999. In this class action suit, Plaintiffs are participants in the Colorado Works Program in Adams County since July 1, 1997 who have been sanctioned or will be sanctioned resulting in a reduction of benefits. Plaintiffs assert that Defendants failed to give them legally sufficient notice prior to such sanctions.

FINDINGS OF FACT

I. The Parties

A. Named Plaintiffs

Plaintiff Frances F. Weston, currently a resident of the State of Georgia and formerly a resident of Adams County from July 1, 1997 to February 6, 1999, was a participant in and recipient of benefits under the Colorado Works Program administered through the Adams County Department of Human Services. Ms. Weston is fifty-four years old and has several adult children and five grandchildren. She has serious physical problems and has been unable to work. Ms. Weston was sanctioned on the basis of the notice in Exhibit 51.

Shauna Parks, a resident of Adams County, has been a participant in and a recipient of benefits under the Colorado Works Program administered through the Adams County Department of Human Services. Ms. Parks is twenty-one years old and has one young son. Ms. Parks was sanctioned on the basis of the notice in Exhibit 52. (All exhibit references refer to trial exhibits).

Plaintiff Christine Marie Kneubehl, currently homeless but with a legal residence in Adams County, has been a participant in and a recipient of benefits under the Colorado Works Program through the Adams County Department of Human Services. Ms. Kneubehl is thirty-one years old, with four children who reside with her. In December 1997, Ms. Kneubehl was sanctioned by the Adams County Department of Social Services, on the basis of a notice which she claims she has no recollection of receiving. Exhibit 50.

B. Defendants

Defendant Donald M. Cassata is the Director of the Adams County Department of Human Services, which

administers the Colorado Works Program for residents of Adams County, Colorado. Defendant Adams County Board of Social Services is the governmental entity responsible for supervising the activities of the Adams County Department of Human Services. (Defendants Cassata and the Adams County Board of Social Services will be collectively referred to as the "Adams County Defendants.") Defendant Marva Livingston Hammons is the Executive Director of the Defendant Colorado Department of Human Services ("CDHS"), which is required by statute to oversee the counties' implementation and administration of the Colorado Works Program and to develop standardized forms for the counties to use in delivery of services. C.R.S. § 26-2-712(5).

II. Statutory Background of TANF/Colorado Works Program

A. Overview

Following passage of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, (commonly known as the Welfare Reform Act of 1996), the Colorado General Assembly enacted Senate Bill 97-120, effective July 1, 1997, creating the Colorado Works Program. C.R.S. §§ 26-2-701 et seq. (the "Colorado Works Program Act"). Under this federal and state legislation the program formerly known as Aid to Families with Dependent Children ("AFDC") was abolished. In its place, the Colorado Works Program provides eligible recipients with Temporary Assistance to Needy Families ("TANF") funds. To fund the Colorado Works Program, block grants are provided by the federal government to Colorado, which then distributes the funds to the counties. The underlying goal of the Colorado Works Program is to enable families to become self-sufficient and to promote personal responsibility.

B. Eligibility for Cash Assistance Benefit

With certain exceptions not material to this case, the eligibility requirements for TANF are the same as for AFDC. Under the Colorado Works Program Act, an applicant for a "basic assistance grant," i.e. cash assistance, is eligible to receive the same amount of money he or she would have received under the income qualification rules of the AFDC Program, as those rules existed on July 16, 1996. *See* C.R.S. § 26-2-709(l)(a). The Act further provides that an applicant for benefits "shall receive" this amount of money as long as he or she complies with program requirements and "subject to available appropriations." *Id.* All necessary appropriations have been made to date. Unlike the AFDC program, under TANF, participants are required to enter into an Individual Responsibility Contract ("IRC") which sets out certain program requirements, and usually specifies certain work activities a participant must engage in. For example, the IRC may require the participant to attend meetings at a placement or training agency.

Under the Colorado Works Program Act, "[c]ounties are required to provide basic cash assistance grant[s] to eligible applicants and participants based on statewide eligibility criteria and rules." Exhibit 8, Agency Letter AFDC-97-12-A, July 3, 1997. Adult care-providers of a family unit are limited to sixty months of TANF eligibility during their lifetime after age eighteen, and are required to participate in a work activity within twenty-four months of receipt of benefits. During any period in which the participant is involved in work activities, the twenty-four month limit does not run. If federal block grants are provided and a participant continues to meet eligibility criteria, a participant has a right to receive, and Adams County Defendants must provide, TANF cash assistance benefits until the expiration of the sixty months of benefits. There is no discretion on the part of Adams County officials not to provide cash assistance to an

eligible participant who has established eligibility and who has not been validly sanctioned or terminated.

C. The State's Role

Under the Colorado Works Program Act, CDHS is responsible for overseeing the works program. *See* C.R.S. § 26-1-111(2)(a), § 26-2-711(1), §§ 26-2-712(5)(a)&(e), §§ 26-2-715(2)-(3). CDHS Is required to "develop standardized forms...for the counties' use in streamlining the application process, delivery of services, and tracking of participants." C.R.S. § 26-2-712(5)(a).

CDHS maintains a database, the Client Oriented Information Network, which is known as the COIN system. This database is accessible by Adams County and has, from the inception of the Colorado Works Program in July, 1997, contained a series of codes describing the activities giving rise to sanction. By imprinting these codes on a form, Adams County generated printed sanction notice forms which they sent to participants to be sanctioned.

The COIN system has changed over time, and CDHS advises counties of the changes and of new notice requirements through meetings, verbal communications and letters including letters known as agency letters. Also included in the Office of Self-Sufficiency of CDHS is the Office of Appeals responsible for reviewing decisions of Administrative Law Judges regarding individual sanction cases.

D. Sanction Notice Requirements

The Colorado Works Program Act requires that a county's notices of sanctions to participants in the Colorado Works Program "shall inform them of the basis for the county's decision or action and shall inform them of their rights to a county conference under the dispute resolution

process and of their rights to state level appeal and the process of making such appeal." C.R.S. § 26-2-127(l)(a)(I).

Under the Colorado Code of Regulations, "[e]ach applicant for or recipient of public and financial assistance, or a basic cash grant. . . is entitled to receive prior written notice of any agency action affecting his/her eligibility for or receipt of benefits or service." CDHS Manual § 3.830; 9 CCR 2503-1 at 113.22i. State regulations promulgated under the Colorado Works Program Act require that a recipient be given adequate, timely notice of any action that will adversely affect a person's cash benefits. Failure to give adequate notice is grounds for setting aside the action on appeal. *See* CDHS Manual, §§ 3.830.2, 3.830.2l & 3.830.22; 9 CCR 2503-1 at 113.22j. Under the CDHS rules, a participant has ninety days from the date of a notice of an adverse action to file an appeal with CDHS. *See* CDHS Manual, § 3.830.24.B; 9 CCR 2503-1 atl 113.23a.

These regulations specify the necessary components of an adequate notice as follows:

(a) The notice must be in writing; and

(b) It must describe clearly and in terms that are understandable to the applicant or recipient the action to be taken and the reason(s) for the action; and

(c) It must refer specifically by number to the section(s) of the state department's rules and/or in the Colorado Works Program, the county's official written policy(s) that require or permit the action be taken, or cite the specific changes in federal or state law requiring the action; and

(d) It must state the effective date of the proposed action; and

(e) It must explain the individual's right to request a local level dispute resolution conference and state level fair hearing, the time period for requesting a conference or hearing, and the steps which must be taken to obtain a conference or hearing; and

(f) It must explain the recipient's right to continued benefits and the obligation to repay if it is determined that the recipient was not entitled to receive them; and

(g) It must inform the individual of his/her right to be represented or assisted by legal counsel, a relative, a friend, or a spokesperson of his/her choosing.

(h) To the extent practicable, notice shall be in his/her primary language. If she/he is illiterate, the action shall also be explained verbally.

CDHS Manual at § 3.830.2; 9 CCR 2503-1 at p. 113.22j.

E. Requirements for Imposition of Sanctions

The regulations on sanctions under the Colorado Works Program direct the counties to establish the circumstances that may result in a sanction, to determine when a sanction will begin and how long it may last, and to define the standards for "good cause" under which a participant's infraction will be excused. *See* CDHS Manual § 3.621.14(c); 9 CCR 2503-1 at 24.01. These regulations establish the following categories under which a county may sanction a Program participant: (1) failure to cooperate with the county's Child Support Enforcement Program; (2) failure to have the participant's minor children immunized; and, (3) failure to cooperate with the work activity requirement of the Colorado Works Program, without good cause. *See* CDHS Manual § 3.621.1; 9 CCR 2503-1 at 24.01. No sanctions may

be imposed unless one of these three statutory grounds exists.

Under the Colorado Works Program Act, sanctions - in the form of a reduction of the amount of cash assistance provided to a participant's family unit - must be imposed against a participant who fails, without good cause, to comply with the terms and conditions of the participant's Individual Responsibility Contract. *See* C.R.S. § 26-2-711(l)(a)(I). The nature and scope of the good cause that will excuse an infraction is to be determined by the particular county involved. *Id.*

F. Nature of Sanctions

The regulations require that the first sanction for a particular violation will be a 25% reduction in the family unit's cash assistance for at least one month. If the participant's deficiency has not been cured during the first-level sanction period, the CDHS regulations require the county to impose a second-level sanction amounting to a 50% reduction to the family's cash assistance. This sanction can last up to another three months, at the county's discretion. If the participant has not cured his or her deficiency during the second-level sanction period, the regulations require the county to impose a third-level sanction amounting to a 100% reduction of the family's cash assistance benefits. The third sanction must remain in place "not less than three (3) months and not more than six (6) months as determined by the county," but a sanction that is not cured by the end of this time period "shall remain in effect until cured." *See* CDHS Manual § 3.621.2.(A)-(C); 9 CCR 2503-1 at 24.02. Adams County has elected the three month period for the second sanction, and the six month period for the third sanction.

A participant who is unable to cure a deficiency that has led to a third-level sanction is cut off from all cash assistance

benefits. CDHS Manual, § 3.621.2 (C) & (D); 9 CCR 2503-1 at 24.02. The regulations specify that when a participant reaches a third-level sanction, even after curing the alleged infraction, all subsequent sanctions must result in a 100% reduction in cash benefits. *See* CDHS Manual § 3.621.2.(D); 9 CCR 2503-1 at 24.02.

III. The Adams County Notices

The Adams County Defendants have used sanction notice forms prepared by CDHS. These sanction notices are prepared with pre-printed, double-sided standardized forms that have been supplied to the Adams County Defendants by CDHS. The actual individual sanction notices are generated by the Adams County Defendants through a county technician who accesses the COIN computer database maintained by CDHS. The technician types into the computer system a series of three-digit codes to indicate what particular message text should be printed on the sanction notice form. The notice form with this computer-generated message text is then sent to the Adams County Department of Human Services, where the notice form is mailed to the participant. The Adams County Defendants never included in the sanction notice forms any case-specific information that is known only to the case managers, i.e. the particulars of the alleged misconduct which the case manager believes warrants a sanction. Indeed, Dr. Cassata testified at trial that this system of using COIN codes from a central computer guaranteed that no case-specific information would be contained in the sanction notices.

The computer-generated message texts that are printed on the sanction notice forms have evolved. These evolutions reflect a limited increase in specificity in sanction notice information by CDHS, which instituted the revisions through the COIN system. The time periods covered by these evolutions in sanction notice practices are as follows:

Phase I	July 1997 to December 1997
Phase II	December 1997 to July 1998
Phase III	July 1998 to December 1998
Phase IV	September 1998 to March 1999
Phase V	March 1999 to present

The first four phases of sanction notices issued by the Adams County Defendants show that the Adams County Defendants generated more than 1050 sanction notice forms prior to March 1, 1999. The notices are separated based upon each form used (Tabs A-P) and are contained in Exhibit 1.

A. *Phase I (July 1997 to December 1997)*

The first phase of sanction notice forms began after the Colorado Works Program went into effect on July 1, 1997, and were used by the Adams County Defendants through December 1997. (*See* Exhibit 9, Agency Letter AFCD-97-16-A, dated August 7, 1997.) The message texts that were printed on these sanction notice forms are known as COIN Codes #437 and #307. The sanction notice forms using Code #437 provided a generic recitation of all three categories of grounds for a sanction, i.e. a failure to cooperate with either the "works requirement, child support requirement, or immunization requirement of the Colorado Works Program." These notice forms did not specify which category applied to the participant, nor did they provide any explanation of the particular conduct that triggered the sanction. These sanction notices also failed to provide a correct citation to the state regulation authorizing the sanction, and did not provide any citation to the Adams County Defendants' policy that authorized the sanction. Additionally, these forms all stated that the participant had twenty-six days to appeal, rather than ninety days as provided by CDHA rules. These sanction notices are found at Tab A of Exhibit 1.

The sanction notices using COIN Code #307 provided even less information about the nature of a participant's

sanction, stating only that the participant "has received a third sanction," with no explanation of either the type of violation, i.e., the category of the sanction, or the particular conduct that had triggered the sanction. These sanction notice forms also lacked a correct citation to state rules and any citation to county policies. These notices are found at Tab B of Exhibit 1.

B. *Phase II (December 1997 to July 1998)*

In December 1997, CDHS issued an Agency Letter announcing certain changes in both the message texts and the method of issuing sanction notices. Under this Agency Letter, CDHS no longer required counties to issue new sanction notice forms when a participant's sanction rolled over to a second or third level. Instead, new language was added to COIN Code #437 to inform the participant that there would be additional decreases in the participant's cash assistance if the participant did not cure the underlying sanction. The Adams County Defendants used these forms from December 1997 through July 1998. These notices are found at Tab C of Exhibit 1.

These sanction notice forms continued the practice of informing the participant only of the three possible categories of a sanction rather than the particular category that applied to the participant. Like the earlier notices, these sanction notices did not inform the participant of the particular conduct that triggered the sanction, they did not include correct citations to state or county authority and they erroneously stated that the appeal period was twenty-six rather than ninety days. Finally these sanction notices failed to inform the participant when the additional decreases in cash assistance would occur or how long they would last, or that all subsequent sanctions would be a 100% reduction in benefits if the participant ever reached a third-level sanction.

During this Phase II of sanction notice forms, the Adams County Defendants continued to issue sanction notices using the COIN Code #307. There was no change in the content of the message texts in these notices. They are found at Tab B of Exhibit 1.

C. *Phase III (July 1998 to December 1998)*

In July 1998, CDHS again revised the content of COIN Code #437, and added COIN Codes #468 and #469. This revision eliminated the use of multiple sanction categories as the explanation of the reason for a sanction but the revised sanction notice forms remained deficient. Although the revised Code #437 informed a participant that he or she was being sanctioned for failing to cooperate with "the work participation requirement of the Colorado Works Program," the sanction notices still did not provide any specific information about the conduct that had triggered the sanction.

The COIN Code #468 provided a similar description of the child support enforcement sanction category, but without any description of the underlying conduct that triggered the sanction. The COIN Code #469 provided a description of the immunization category for sanctions, but without a description of the underlying conduct for the sanction.

None of these new message texts included any citation to county policy, nor did they provide any effective dates for the rollovers of the sanctions or a description of the consequences of reaching a third-level sanction. *See* Exhibit 8. These notices can be found at Exhibit 1, Tab C (COIN Code #437), and Tab D (COIN Code #469). These forms were used by Adams County from July 1998 through December 1998.

D. ***Phase IV (September 1998 to March 1999)***

In September 1998, the CDHS issued a new Agency Letter to announce another revision of the message texts that would be used for sanction notice forms, as embodied in what the agency referred to as the "700-series" of COIN codes. This Agency letter included a decision from an Administrative Law Judge and the Office of Appeals holding that the prior sanction notice form was inadequate as a matter of law. *See* Exhibit 27. Under this revision, the Adams County Defendants were to use a completely new set of message texts for sanction notice forms. These new message texts provided the participant with a description of the category of the sanction, but only a generic description of the conduct that had triggered the sanction, *e.g.*, "You missed an appointment with your worker." The sanction notice forms using these 700-series COIN codes still failed to contain specific details about the particular conduct that triggered the sanction, any citation to county policy, any information of when the sanction would roll over to a second- or third-level sanction, or a description of the consequences for reaching a third-level sanction. The 700 Series Notices are found at Tabs E - O of Exhibit 1.

Despite CDHS's instructions to the Adams County Defendants in the September 15, 1998 Agency Letter, Adams County continued to issue sanction notices using the old 400-series message texts rather than the new 700-series message texts. *See* Exhibit 11. The Adams County Defendants continued to issue such obsolete sanction notice forms until December 7, 1998, when CDHS removed the 400-series codes from availability in the COIN system.

E. ***Phase V (March 1999 to present)***

In February 1999, CDHS issued a new Agency Letter to inform counties that the COIN system would state when a rollover of a sanction would occur. The sanction notice

forms now in use by the Adams County Defendants include this information, along with the message texts generated by the 700-series COIN codes. These notices remain deficient in that they still lack adequate descriptions of the conduct giving rise to the sanctions and they fail to state the consequences of reaching a third-level sanction, and the notices fail to provide amounts of the sanctions. These notices are also found at Tabs E - O of Exhibit 1.

IX. Adams County Defendants' Response to CDHS Revisions

During the period when CDHS was revising the various sanction notice forms, the Adams County Defendants adhered to their own practices with respect to sanction notices, even in the face of adverse decisions by administrative law judges and the CDHS's Office of Appeals. Such decisions are by statute binding on the counties and must be complied with by Adams County.

C.R.S. §§ 26-2-127(2); 26-1-106.

After an Adams County notice using the initial COIN Code #437 was held to be inadequate, John Kelley, Director of External Affairs for CDHS, instructed all counties, including the Adams County Defendants, to begin using sanction notice forms that included more specific information generated at a local level. Despite this instruction, Adam Murphy of the Adams County Department of Social Services told Kelley that the deficient notices were "the State's problem," and Adams County would "not participate in a solution" and would not provide case-specific information in its sanction notices. In addition, Mr. Murphy instructed Patricia Leischuk not to revise or provide supplemental information on the sanction notice forms.

In the fall of 1998, Ms. Leischuk, on her own initiative, developed a local-level "sanction prevention notice" to

encourage Adams County participants to correct problems that might lead to sanctions before any actual sanction notice is issued. These sanction prevention notices were not intended to comply with the CDHS's adequate notice rules, and do not comply with these rules. *See* CDHS Manual §§ 3.830.21 & 3.830.22; 9 CCR 2503-1.

X. Identification of Class Members and Amounts Withheld

Plaintiffs have shown the identities of each class member sanctioned on the basis of each form of notice used, and the amounts withheld from each class member as sanctions. *See* Exhibit 4.

LEGAL ANALYSIS

I. Jurisdiction of Court

This Court has jurisdiction over this action and Defendants pursuant to Colorado's Uniform Declaratory Judgments Law, C.R.S. §§ 13-51-101-115; Colorado's Administrative Procedure Act, C.R.S. §§ 24-4-101-108; and 42 U.S.C. § 1983.

II. Exhaustion of Administrative Remedies

Defendants previously moved to dismiss this action for failure of the Plaintiffs to exhaust administrative remedies. The court denied that motion and ruled that Plaintiffs were excused from pursuing administrative remedies for the reasons set forth in this court's ruling from the bench on May 28, 1999, which ruling the court reaffirms.

III. Legal Issues Related to Class

The Court has certified this case as a class action pursuant to Rule 23(b)(2) of the Colorado Rules of Civil Procedure, with the following definition of a class:

All participants in the Colorado Works Program in Adams County since July 1, 1997, who have been sanctioned or will be sanctioned with a reduction in benefits after failing to receive adequate notice of the proposed sanction.

All participants in the Adams County's Colorado Works Program who have been sanctioned to date are similarly affected by Defendants' actions and policies challenged herein. All are, or have been, subject to reduction or discontinuance of their Colorado Works Program benefits without statutorily- and constitutionally-mandated adequate notice.

The persons in the class are so numerous as to make joinder impractical. Defendants have acted or refused to act on grounds generally applicable to the class. There are questions of law and fact common to all members of the Plaintiff class' claims, and the representative Plaintiffs' claims are typical of the claims of the class. In each case, Plaintiffs are persons residing or who did reside in the State of Colorado who received a Notice of Sanction advising them that their cash benefits would be reduced and/or terminated. In each case, the notices failed to comply with state statutes and regulations and with the Plaintiffs' right to due process of law as set forth in the United States and Colorado Constitutions.

The representative Plaintiffs have and will fairly and adequately protect the interests of the class. Plaintiffs' attorneys are skilled and experienced in class action litigation and civil rights litigation.

IV. Plaintiffs' Due Process Claims

A. Entitlement /Property Interest Issues

1. Standard for Determining Property Interest

In *Goldberg v. Kelly*, 397 U.S. 254 (1970), the U. S. Supreme Court held that public assistance benefits "are a matter of statutory entitlement for persons qualified to receive them. ... [and t]heir termination involves state action that adjudicates important rights." *Id.* at 262. However, Defendants assert that Plaintiffs have no right to due process because both the Welfare Reform Act and the Colorado Works Program Act provide that cash assistance is not an entitlement, and therefore no constitutionally protected property interest exists. See C.R.S. § 26-2-704; 42 U.S.C. § 601(b).

With respect to a property interest in a government benefit, constitutionally cognizable property interests "are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law - rules or understandings that secure certain benefits... ." *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972). As the United States Supreme Court explained in the companion case to Roth, "[a] person's interest in a benefit is a 'property' interest for due process purposes if there are such rules or mutually explicit understandings that support his claim of entitlement to the benefit... ." *Perry v. Sindermann*, 408 U.S. 593, 601 (1972); *see Carlson v. Industrial Claim Appeals Office*, 950 P.2d 663, 666 (Colo. App. 1997) ("A person has a protected property interest at stake only if he or she has a legitimate claim of entitlement to it as opposed to a unilateral expectation."). In determining whether the "no entitlement" language defeats the creation of a property interest, the court has considered the legislation as a whole in light of the above standards, using a functional analysis.

2. Mandatory Nature of TANF/Colorado Works

Under the Colorado Works Program Act, payment of cash benefits to qualifying participants is not discretionary if funding has been made available. Additionally, the Act contains mandatory language regarding eligibility sanctions and appeals processes. *See, e.g.*, CDHS Manual, §§ 3.600.1, 3.830.2, 3.830.21, 3.830.22; & 3.850.41. Both state and Adams County officials have acknowledged that recipients have the right to receive cash assistance benefits provided that they are eligible and funds are available, and that Adams County must make such payments. *See, e.g.*, Exhibit. 8, Para. 4. While benefits may be denied to non-complying participants, that does not change the mandatory nature of the program for those who do comply. If the program is fully funded and a participant is in full compliance with all its requirements, including the IRC, the participant is entitled to benefits; nothing in the "no entitlement" language changes that fact.

3. Meaning of "No Entitlement"

There are a number of possibilities regarding the intended meaning of the "no entitlement" language in the state and federal statutes. John Kelley, the Executive Manager of the Colorado Department of Public Works, testified that he believed that "no entitlement" referred to the fact that benefits would only be made available if the program was funded. Another possibility is that Congress simply intended to reinforce the new concept that under TANF, as opposed to AFDC, benefits are time-limited and recipients are required to participate in job search and career training activities as prescribed by the IRC.

Defendants contend that when Congress specified that benefits are not an entitlement, it intended to prevent the creation of a property interest and thereby prevent due

process rights from attaching to the right of any person to receive benefits. The court rejects that interpretation for two reasons. First, it is inconsistent with the mandatory nature of the program. As described above, the substantive provisions of the program permit no discretion. Subject to the availability of funds, payment of cash benefits to qualified, complying participants is mandatory, thereby creating a mutually explicit understanding that supports a claim of entitlement. It would violate principles of sound statutory construction to interpret the "no entitlement" language to negate what the substantive provisions of the statute plainly establish.

Second, to the extent congress did intend to prevent due process rights from attaching, that would be constitutionally impermissible. Congress may not create a property interest by the substantive provisions of a statute but then defeat the right to due process merely by reciting that there is no entitlement. In this regard, *Cleveland Board of Educ. v. Loudermill*, 470 U.S. 532 (1985), is instructive. In *Loudermill*, the defendants argued that the plaintiff had no due process interest because the state statute at issue not only set out the plaintiff's expectation of a benefit, but also provided that this expectation could be terminated only by following certain procedures. *Id.* at 539-40. The defendants contended that they had followed those termination procedures, and therefore, the plaintiff had no legitimate expectation in the benefit. *Id.* at 540. The Supreme Court's rejection of this argument was clear and unequivocal:

> [I]t is settled that the "bitter with the sweet" approach misconceives the constitutional guarantee. . . . The categories of substance and procedure are distinct. Were the rule otherwise, the Clause would be reduced to a mere tautology. "Property" cannot be defined by the procedures provided for its deprivation any more than can life or liberty.

Id. at 541; *see Furlong v. Shalala*, 156 F.3d 384, 395 (2d. Cir. 1998) ("The issue of what constitutes a substantive property interest is analytically distinct from the issue of what procedures must be followed if such interest is to be taken away."); *Washington Legal Clinic for the Homeless v. Barry*, 107 F.3d 32, 38 (D.C. Cir. 1997) ("[W]e doubt that blanket 'no entitlement' disclaimers can by themselves strip entitlements from individuals in the face of statutes or regulations unequivocally conferring them.").

Where a statute is susceptible to two possible interpretations, courts should avoid the interpretation that renders the statute unconstitutional. *See Buckley v. Chilcutt*, 968 P.2d 112, 116 (Colo. 1998); *BQP Indus., Inc. v. State Bd. of Equalization*, 694 P.2d 337, 343 (Colo. App. 1984) ("If a statute is susceptible of both constitutional and unconstitutional interpretations, the court will construe it to avoid constitutional infirmities."). Interpreting the "no entitlement" language to deprive Plaintiffs of due process in light of the otherwise mandatory nature of TANF would render those and the Colorado Works Program Act provisions of the statute unconstitutional in light of the *Loudermill* analysis. Therefore, the court finds that the "no entitlement" language should be interpreted so as not to deprive Plaintiffs of due process.

4. Due Process Under Colorado Law

Under Colorado law, minimum due process is also required even when the process at stake concerns the revocation of a benefit to which the party involved has no entitlement. *See Denver Welfare Rights Org. v. Public Util. Comm'n*, 547 P.2d 239, 243 (1976) (holding that uninterrupted continued utility service is a due process property interest); *A.D. Jones & Co. v. Parsons*, 319 P.2d 480, 483 (Colo. 1957) (recognizing that while no person has a right or entitlement to a liquor license, once such a license

is awarded, "it is property within the meaning of the due process clause of the Federal Constitution") (citation omitted); *Donn v. Industrial Claim Appeals Office*, 865 P.2d 873, 875 (Colo. App. 1993) ("Recipients of statutorily created benefits have a property interest in the continued receipt of those benefits."); *Chroma Corp. v. Adams County*, 543 P.2d 83, 85 (Colo. App. 1975) ("[T]he holder of a liquor license has sufficient interest therein to require procedural due process protection... ."); *Alcott Pharmacy, Inc. v. State Bd. of Pharmacy*, 531 P.2d 987, 989 (Colo. App. 1975) (holding that continued possession of pharmacy license is a due process property interest).

B. Standard for Determining Whether There Has Been a Due Process Violation

In order to prevail on a constitutional due process claim, Plaintiff class members must prove two elements. *Watso v. Department of Social Servs.*, 841 P.2d 299, 304 (Colo. 1992). First, the plaintiff needs to show that a constitutionally cognizable interest is at stake. *Roth*, 408 U.S. at 569-70. Second, if the plaintiffs prove a cognizable interest, the court then assesses whether or not the procedures employed were constitutionally adequate. *Matthews v. Eldridge*, 424 U.S. 319, 333-35 (1976). Pursuant to *Weaver v. County Dep't of Social Servs.*, 791 P.2d 1230, 1233 (Colo. App. 1990), the notices must be reviewed objectively to determine whether they comply with due process. "The constitutional adequacy of a pre-denial notice cannot be tested on a subjective basis; its validity for due process purposes is dependent upon its adequacy in providing the necessary information to a reasonable person. The courts are not required to determine the adequacy of such a notice based upon the existence of some specialized knowledge of the recipient or his agent." *Id.* at 1233. Therefore, Adams County's sanction notices will be scrutinized on an objective basis.

C. The Sanctions Notices Do Not Meet the Requirements of Due Process

Procedural due process involves "the manner in which state action occurs and [the requirement of] notice and fair opportunity to be heard." *People v. Garlotte*, 958 P.2d 469, 474 (Colo. App. 1997) (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)). A notice of deprivation provides sufficient due process when it provides "timely and adequate notice detailing the reasons for a proposed termination, and an effective opportunity to defend by confronting any adverse witnesses and by presenting his own arguments and evidence orally." *Goldberg v. Kelly*, 397 U.S. 254, 267-68 (1970); *see LaChance v. Erickson*, 118 S. Ct. 753, 756 (1998) ("The core of due process is the right to notice and a meaningful opportunity to be heard.") (citation omitted); *Weaver*, 791 P.2d at 1233 (holding that "notice of adverse action that does not substantially comply with the federal and state requirements cannot provide the basis for a deprivation of benefits"). The United States Supreme Court explained in *Goldberg* that the need for specific and detailed advance notice is all the more acute when the adverse action is based upon "incorrect or misleading factual premises." *Goldberg*, 397 U.S. at 267-68.

Under the Fourteenth Amendment, "the due process clause requires that a state agency explain, in terms comprehensible to the client, exactly what the agency proposes to do and explain the agency's reasons for its action in enough detail that the client can assess the correctness of the agency's decision, make an informed decision as to whether to appeal, and be prepared for the issues to be addressed at the hearing." *Doston v. Duffy*, 732 F. Supp. 857, 872 (N.D. Ill. 1988). Under these principles, the constitution requires that, at a minimum, an agency must "explain, in terms comprehensible to the claimant, exactly what the agency proposes to do and why the agency is taking this

action." *Ortiz v. Eichler*, 616 F. Supp. 1046, 1061 (D.Del. 1985), *aff'd*, 794 F.2d 889, (3rd Cir. 1986). Additionally, the notice (including the reasons for the action) must be in writing. Oral communications cannot repair the defects in written notice. *Ortiz*, 616 F. Supp. at 1062 (collecting cases); *see Meyer v. New Jersey Dep't of Human Servs.*, 635 A.2d 544, 546-57 (N.J. App. 1993).

The state regulation regarding notices provides the minimum level or "floor" for the due process analysis in this case. *See Department of Health v. Donahue*, 690 P.2d 243, 249 (Colo. 1984) ("When the state... promulgates a regulation that imposes on governmental departments more stringent standards than are constitutionally required, due process of law requires those departments to adhere to those standards.. . ."); *Weaver*, 791 P.2d at 1233; *Shumate v. State Personnel Bd.*, 528 P.2d 404, 407 (Colo. App. 1974), vacated in part, on other grounds, *Nguyen v. Regional Transp. Dist.*, 1999 WL 304915 (Colo. App. 1999) ("[W]hen a state agency promulgates rules governing such matters as discharge of its employees which are more stringent in favor of the employee than due process would require, the agency must strictly comply with those rules.").

The notices at issue in this case are inadequate as a matter of law under post-*Goldberg* case law. The post-*Goldberg* cases consistently hold that a pretermination notice fails to meet the minimum requirements of due process if the notice merely provides the "ultimate reason" for the reduction in benefits, or if the notice fails to provide an explanation of the specific rationale and circumstances of the reduction. *See, e.g., Ortiz v. Eichler*, 794 F.2d 889, 893-95 (3d Cir. 1986); *Dilda v. Quern*, 612 F.2d 1052, 1057 (7th Cir. 1980) (per curiam) (holding that a notice is constitutionally deficient even though "it states the ultimate reason for the reduction or cancellation of benefits" because the notice

"fails to provide the recipient with a breakdown of income and allowable deductions.").

The principle that due process requires a specific and explicit explanation of the actual conduct that has triggered a reduction or termination of benefits is well settled. *See e.g.*, *Vargas v. Trainor*, 508 F.2d 485, 489 (7th Cir. 1974); *Gray Panthers v. Schweiker*, 652 F.2d 146, 168 (D.C. Cir. 1981) ("Unless a person is adequately informed of the reasons for denial of a legal interest, a hearing serves no purpose and resembles more a scene from Kafka than a constitutional process"); *Tripp v. Coler*, 640 F. Supp 848, 858 (N.D.Ill. 1986) ("[T]he reasons must be specific enough to inform the recipient how the agency's decision was reached. Further, the agency has a duty to describe the precise issues which will be reviewed on appeal if the recipient appeals the decision to restrict benefits.") (citation omitted).

None of the sanction notices at issue meets the standards set forth above. Particularly troubling in this case was Adams County's complete abdication of its responsibility to provide adequate notices. Even after administrative law judges and CDHS found the notices were grossly deficient, Adams County flatly refused to provide participants with meaningful, case-specific information in its sanction notices. The notices used by Adams County were in violation of the state regulation and deprived the Plaintiff class members of due process as follows:

i. Phase I (July 1997 to December 1997)

The sanction notices issued by Adams County using the COIN Codes #307 and #437, or similar message texts, largely between July 1997 and December 1997 but also thereafter, were deficient in the following respects:

a. The sanction notices failed to state the actual amount of a sanction and in most cases

the notices confusingly implied that the participant would receive the full amount of the participant's cash grant, and failed to describe the effect of the sanction on future sanction levels.

b. The sanction notices failed to provide a sufficiently specific or accurate description of the reason for the action by merely listing the three possible categories for a sanction.

c. The sanction notices failed to provide a specific and accurate citation to a state regulation or county policy that permitted or required the sanction because the citations that were included in the notice referred only to general regulations that say nothing specific about the reason for the particular sanction.

d. The sanction notices incorrectly stated that the participant had only twenty-six days to appeal, rather than ninety days as provided by CDHS rules. This failure continued until at least May 1998.

ii. Phase II (December 1997 to July 1998)

The notices issued by Adams County using the COIN Codes #307 and #437, or similar message texts, largely between January 1998 and July 1998 but also thereafter, were deficient in the following respects:

a. The sanction notices failed to state the actual amount of a sanction and the effect of the sanction on future sanction levels.

b. The sanction notices failed to provide a sufficiently specific or accurate description of

the reason for the action by merely listing the three possible categories for a sanction.

c. The sanction notices failed to provide a specific and accurate citation to a state regulation or county policy that permitted or required the sanction because the citations that were included in the notice referred only to general regulations that say nothing specific about the reason for the particular sanction.

d. The sanction notices failed to provide the effective date for the adverse actions, i.e. the rollover of the sanction, that ensued from a failure to cure the sanction during the first level or second level of the sanction.

e. The sanction notices incorrectly stated that the participant had only twenty-six days to appeal, rather than ninety days as provided by CDHS rules. This failure continued until at least May 1998.

iii. Phase III (July 1998 to December 1998)

The notices issued by Adams County using the COIN Codes #307, #437, #468 and #469, or similar message texts, largely between August 1998 and December were deficient in the following respects:

a. The sanction notices failed to state the actual amount of a sanction and the effect of the sanctions on future sanction levels.

b. The sanction notices failed to provide a sufficiently specific or accurate description of the reason for the action by merely listing the category for a sanction without listing the actual conduct that a participant's case

manager believed was in violation of the program.

c. The sanction notices failed to provide a specific and accurate citation to a state regulation or county policy that permitted or required the sanction because the citations that were included in the notice referred only to general regulations that say nothing specific about the reason for the particular sanction.

d. The sanction notices failed to provide the effective date for the adverse actions, i.e. the rollover of the sanction, that ensued from a failure to cure the sanction during the first level or second level of the sanction.

iv. Phase IV (September 1998 to March 1999)

The notices issued by Adams County using the COIN Codes #711, #740, #741, #742, #743, #744, # 745, #746, # 747, #748, and #780, or similar message texts, largely between December 1998 and February 1999 were deficient in the following respects:

a. The sanction notices failed to state the actual amount of a sanction and the effect of the sanctions on future sanction levels.

b. The sanction notices failed to provide a sufficiently specific description of the reason for the action by failing to specifically identify the particular conduct, rather than a generic description of the conduct, that a participant's case manager believed was in violation of the program.

c. The sanction notices failed to provide the effective date for the adverse actions, i.e. the

rollover of the sanction, that ensued from a failure to cure the sanction during the first level or second level of the sanction.

v. Phase V (March 1999 to present)

The notices issued by Adams County using the COIN Codes #711, #740, #741, #742, #743, #744, # 745, #746, # 747, #748, and #780, or similar message texts, between March 1998 and the present are deficient in the following respects:

a. The sanction notices failed to state the actual amount of a sanction and the effect of the sanction on future sanction levels.

b. The sanction notices failed to provide a sufficiently specific description of the reason for the action by failing to specifically identify the particular conduct, rather than a generic description of the conduct, that a participant's case manager believed was in violation of the program.

D. Explanation of Appeal Rights

As noted above, many of the sanction notices incorrectly state an appeal period of twenty-six rather than ninety days. It is impossible to say who might have appealed but for the incorrect deadline information. Therefore, the court holds that all notices containing the incorrect deadline are void as a matter of law.

Plaintiffs have also asserted that the language currently used setting forth appeal rights is "legalese" which is unintelligible to an ordinary person. In support of that, Plaintiffs presented the testimony of Dr. Mary Jo Renick, a developmental psychologist and literacy specialist, regarding the level of education necessary to understand the language.

Her opinions were based primarily on measurements of the relative number of words per sentence and syllables per word in the language at issue. The explanation of appeal rights is certainly not a model of clarity and the court encourages the state to improve the language. Nonetheless, the court is unable to find as a matter of law that the explanation, by itself, is so deficient as to constitute a due process violation.

IV. Defendants' Failure to Comply with Regulations

The Colorado Works Program Act and other provisions of the Human Services Code require CDHS and the Adams County Defendants to comply with the rules and regulations promulgated by CDHS. *See* C.R.S. § 26-1-118(l); *see also* C.R.S. §§ 26-1-108(2) & 26-2-124(3). The Colorado Works Program regulations do not provide exemptions for Adams County from its obligations to provide adequate advance notice to program participants. The Adams County Defendants failed and continue to fail to provide Colorado Works participants in that county with notices that comply with the standards set out in C.R.S. § 26-2-127(l)(a)(I) and 9 CCR 2503-l, § 3.830.21.

V. Defendants' Failure to Provide Due Process Under State Constitution

Defendant Adams County Board of Social Services, acting under color of law, failed to provide adequate notice prior to denying property interests of the Plaintiff class members that are protected by the Due Process Clause of the Colorado Constitution. Colo. Const. art. II § 25.

VI. Defendants' Failure to Provide Due Process Under U.S. Constitution in Violation of 42 U.S.C. § 1983.

Defendants Cassata and Adams County Board of Social Services, by the actions described herein, and acting under color of state law, failed to provide adequate notice prior to

denying property interests of the Plaintiff class members that are protected by the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States, in violation of 42 U.S.C. § 1983.

VII. Injunctive Relief Against State Defendants

Plaintiffs seek an injunction against the state's use of the sanction notice forms currently in use. However, because the county determines whether there has been a violation, because it is the county that determines what constitutes a good cause to excuse compliance, because the county has access to all of the case-specific information relating to a participant's compliance, and because the county prepares and sends out the final sanction notices, the state cannot as a practical matter create an adequate sanction notice without additional information from the county. Therefore, while the court finds that the state's form of sanction notice is deficient, it is apparent that in most cases any form of sanction notice created by the state will be deficient if not supplemented by the county with pertinent, accurate information. The state can prescribe a form, but only the county is capable of providing information specific to the case. In light of the fact that the state's forms will generally be deficient unless supplemented by the county, the court declines to enjoin the state from using forms which are deficient only because they fail to contain information that only the county can provide.

ORDER AND JUDGMENT

Based on the foregoing, it is ORDERED that judgment shall enter in favor of Plaintiffs and against Marva Livingston Hammons, the Colorado Department of Human Services, Donald M. Cassata and the Adams County Board of Social Services as follows:

(1) The Court herewith enters judgment in favor of Plaintiffs and the Plaintiff class and against Defendants Hammons and the Colorado Department of Human Services pursuant to C.R.S. § 13-51-105, declaring that all notices provided to the Adams County Defendants containing an incorrect statement of the time to appeal are inadequate as a matter of law, and are therefore without legal force or effect.

(2) The Court herewith enters judgment in favor of Plaintiffs and the Plaintiff class and against Adams County Defendants pursuant to C.R.S. § 13-51-105, declaring that the notices that have been provided to Colorado Works participants by the Adams County Department of Human Services are inadequate as a matter of law, and are therefore without legal force or effect.

(3) The Adams County Defendants, their successors in office, agents, and employees, are enjoined from:

(a) reducing or continuing a reduction in the basic cash grant and/or any other benefits provided to any Colorado Works participant on the basis of the inadequate notices issued by Defendants (including all notice forms, Phases I-V described above) and,

(b) issuing any Notices of Proposed Action, or any other form of sanction notice, to Colorado Works participants in Adams County which have any of the defects set forth above and that are inadequate as a matter of law;

and

(c) enforcing in whole or in part any past sanction which was imposed after inadequate notice.

(4) The Adams County Defendants are required to locate each and every individual whose benefits under the Colorado Works Program have been unlawfully reduced or terminated, and to provide notice of the right to be fully reinstated for receipt of the full level of benefits that the participants had been receiving before they were unlawfully deprived of those benefits with applicable interest from the time that the cash assistance should have been paid.

(5) The Adams County Defendants shall reverse the sanctions already issued pursuant to inadequate notice, remove any reference to such prior sanctions in the files of the Plaintiffs and each member of the Plaintiff class and not base any future sanctions, in whole or in part, on any sanction imposed after inadequate notice.

(6) The Adams County Defendants shall provide equitable restitution to Plaintiffs and each member of the Plaintiff class and each individual located as provided in paragraph 5 of this judgment, as described on Exhibit 4, of the full amount of benefits under the Colorado Works Program that were unlawfully withheld, plus interest pursuant to C.R.S. § 5-12-102(l), from the date of withholding to the date of judgment.

(7) The Court reserves jurisdiction over the case for granting further relief pursuant to C.R.S. § 13-51-112.

(8) Plaintiffs are awarded their reasonable attorneys' fees pursuant to the Civil Rights Attorneys Fees Award Act, 42 U.S.C. § 1988. Plaintiffs shall have thirty (30) days to file an itemized description of their fees, and Defendants shall have fifteen (15) days to respond to that itemization. The court may allocate attorneys' fees between the Defendants based on the extent to which Plaintiffs prevailed on claims against each Defendant, and will set a hearing on attorneys' fees, if warranted.

IT IS FURTHER ORDERED that Plaintiffs shall have their costs upon the filing of a bill of costs with the Clerk of the Court within ten (10) days of entry of this judgment;

IT IS FURTHER ORDERED that post-judgment interest shall accrue on all amounts owed by the Defendants from the date of entry of this judgment at the statutory rate of interest.

DATED at Denver, Colorado this 5th day of November, 1999.

/s/ Lawrence A. Manzanares
Lawrence A. Manzanares
District Court Judge

APPENDIX C

PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT

PART A–BLOCK GRANTS TO STATES FOR TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

SEC. 401. PURPOSE.

(a) In General.– The purpose of this part is to increase the flexibility of States in operating a program designed to—

(1) provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;

(2) end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;

(3) prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and

(4) encourage the formation and maintenance of two-parent families.

(b) No Individual Entitlement.–This part shall not be interpreted to entitle any individual or family to assistance under any State program funded under this part.

SEC. 402. ELIGIBLE STATES; STATE PLAN.

(a) In General.–As used in this part, the term 'eligible State' means, with respect to a fiscal year, a State that, during the 2-year period immediately preceding the

fiscal year, has submitted to the Secretary a plan that the Secretary has found includes the following:

(1) Outline of family assistance program. –

(A) General provisions.–A written document that outlines how the State intends to do the following:

(i) Conduct a program, designed to serve all political subdivisions in the State (not necessarily in a uniform manner), that provides assistance to needy families with (or expecting) children and provides parents with job preparation, work, and support services to enable them to leave the program and become self- sufficient.

(ii) Require a parent or caretaker receiving assistance under the program to engage in work (as defined by the State) once the State determines the parent or caretaker is ready to engage in work, or once the parent or caretaker has received assistance under the program for 24 months (whether or not consecutive), whichever is earlier.

(iii) Ensure that parents and caretakers receiving assistance under the program engage in work activities in accordance with section 407.

(iv) Take such reasonable steps as the State deems necessary to restrict the use and disclosure of information about individuals and families receiving assistance under the

program attributable to funds provided by the Federal Government.

(v) Establish goals and take action to prevent and reduce the incidence of out-of-wedlock pregnancies, with special emphasis on teenage pregnancies, and establish numerical goals for reducing the illegitimacy ratio of the State (as defined in section 403(a) (2) (B)) for calendar years 1996 through 2005.

(vi) Conduct a program, designed to reach State and local law enforcement officials, the education system, and relevant counseling services, that provides education and training on the problem of statutory rape so that teenage pregnancy prevention programs may be expanded in scope to include men.

(B) Special provisions.–

(i) The document shall indicate whether the State intends to treat families moving into the State from another State differently than other families under the program, and if so, how the State intends to treat such families under the program.

(ii) The document shall indicate whether the State intends to provide assistance under the program to individuals who are not citizens of the United States, and if so, shall include an overview of such assistance.

(iii) The document shall set forth objective criteria for the delivery of benefits and the determination of eligibility and for fair and equitable treatment, including an explanation of how the State will provide opportunities for recipients who have been adversely affected to be heard in a State administrative or appeal process.

(iv) Not later than 1 year after the date of enactment of this Act, unless the chief executive officer of the State opts out of this provision by notifying the Secretary, a State shall, consistent with the exception provided in section 407(e) (2), require a parent or caretaker receiving assistance under the program who, after receiving such assistance for 2 months is not exempt from work requirements and is not engaged in work, as determined under section 407(c), to participate in community service employment, with minimum hours per week and tasks to be determined by the State.

(2) Certification that the state will operate a child support enforcement program. – A certification by the chief executive officer of the State that, during the fiscal year, the State will operate a child support enforcement program under the State plan approved under part D.

(3) Certification that the state will operate a foster care and adoption assistance program.–A certification by the chief executive officer of the State that, during the fiscal year. the State will

operate a foster care and adoption assistance program under the State plan approved under part E, and that the State will take such actions as are necessary to ensure that children receiving assistance under such part are eligible for medical assistance under the State plan under title XIX.

(4) Certification of the administration of the program.–A certification by the chief executive officer of the State specifying which State agency or agencies will administer and supervise the program referred to in paragraph (1) for the fiscal year, which shall include assurances that local governments and private sector organizations–

(A) have been consulted regarding the plan and design of welfare services in the State so that services are provided in a manner appropriate to local populations; and

(B) have had at least 45 days to submit comments on the plan and the design of such services.

(5) Certification that the state will provide indians with equitable access to assistance.–A certification by the chief executive officer of the State that, during the fiscal year, the State will provide each member of an Indian tribe, who is domiciled in the State and is not eligible for assistance under a tribal family assistance plan approved under section 412, with equitable access to assistance under the State program funded under this part attributable to funds provided by the Federal Government.

(6) Certification of standards and procedures to ensure against program fraud and abuse.–A

certification by the chief executive officer of the State that the State has established and is enforcing standards and procedures to ensure against program fraud and abuse, including standards and procedures concerning nepotism, conflicts of interest among individuals responsible for the administration and supervision of the State program, kickbacks, and the use of political patronage.

(7) Optional certification of standards and procedures to ensure that the state will screen for and identify domestic violence.–

(A) In general.– At the option of the State, a certification by the chief executive officer of the State that the State has established and is enforcing standards and procedures to–

(i) screen and identify individuals receiving assistance under this part with a history of domestic violence while maintaining the confidentiality of such individuals;

(ii) refer such individuals to counseling and supportive services; and

(iii) waive, pursuant to a determination of good cause, other program requirements such as time limits (for so long as necessary) for individuals receiving assistance, residency requirements, child support cooperation requirements, and family cap provisions, in cases where compliance with such requirements would make it more difficult for individuals

receiving assistance under this part to escape domestic violence or unfairly penalize such individuals who are or have been victimized by such violence, or individuals who are at risk of further domestic violence.

(B) Domestic violence defined.–For purposes of this paragraph, the term 'domestic violence' has the same meaning as the term 'battered or subjected to extreme cruelty', as defined in section 408(a) (7) (C) (iii).

(b) Public Availability of State Plan Summary.– The State shall make available to the public a summary of any plan submitted by the State under this section.

SEC. 403. GRANTS TO STATES.

(a) Grants.–

(1) Family assistance grant.–

(A) In general.–Each eligible State shall be entitled to receive from the Secretary, for each of fiscal years 1996, 1997, 1998, 1999, 2000, 2001, and 2002, a grant in an amount equal to the State family assistance grant.

(B) State family assistance grant defined.– As used in this part, the term 'State family assistance grant' means the greatest of–

(i) 1/3 of the total amount required to be paid to the State under former section 403 (as in effect on September 30, 1995) for fiscal years 1992, 1993, and 1994 (other than with respect to amounts expended by

the State for child care under subsection (g) or (i) of former section 402 (as so in effect))

(ii) (I) the total amount required to be paid to the State under former section 403 for fiscal year 1994 (other than with respect to amounts expended by the State for child care under subsection (g) or (i) of former section 402 (as so in effect)); plus

(II) an amount equal to 85 percent of amount (if any) by which the total amount required to be paid to the State under former section 403(a) (5) for emergency assistance for fiscal year 1995 exceeds the total amount required to be paid to the State under former section 403(a) (5) for fiscal year 1994, if, during fiscal year 1994 or 1995, the Secretary approved under former section 402 an amendment to the former State plan with respect to the provision of emergency assistance; or

(iii) 4/3 of the total amount required to be paid to the State under former section 403 (as in effect on September 30, 1995) for the 1st 3 quarters of fiscal year 1995 (other than with respect to amounts expended by the State under the State plan approved under part F (as so in effect) or for child care under subsection (g) or (i) of former section 402 (as so in effect)), plus the total amount required to be paid to the State for fiscal year 1995 under former section 403(l) (as so in effect)

(C) Total amount required to be paid to the state under former section 403 defined.–As used in this part, the term 'total amount required to be paid to the State under former section 403' means, with respect to a fiscal year–

(i) in the case of a State to which section 1108 does not apply, the sum of–

(I) the Federal share of maintenance assistance expenditures for the fiscal year, before reduction pursuant to subparagraph (B) or (C) of section 403(b) (2) (as in effect on September 30, 1995), as reported by the State on ACF Form 231;

(II) the Federal share of administrative expenditures (including administrative expenditures for the development of management information systems) for the fiscal year, as reported by the State on ACF Form 231;

(III) the Federal share of emergency assistance expenditures for the fiscal year, as reported by the State on ACF Form 231;

(IV) the Federal share of expenditures for the fiscal year with respect to child care pursuant to subsections (g) and (i) of former section 402 (as in effect on September 30, 1995), as reported by the State on ACF Form 231; and

(V) the Federal obligations made to the State under section 403 for the fiscal year with respect to the State program operated under part F (as in effect on September 30, 1995), as determined by the Secretary, including additional obligations or reductions in obligations made after the close of the fiscal year; and

(ii) in the case of a State to which section 1108 applies, the lesser of–

(I) the sum described in clause (i); or

(II) the total amount certified by the Secretary under former section 403 (as in effect during the fiscal year) with respect to the territory.

(D) Information to be used in determining amounts. –

(i) For fiscal years 1992 and 1993.–

(I) In determining the amounts described in subclauses (I) through (IV) of subparagraph (C) (i) for any State for each of fiscal years 1992 and 1993, the Secretary shall use information available as of April 28, 1995.

(II) In determining the amount described in subparagraph (C) (i) (V) for any State for each of fiscal years

1992 and 1993, the Secretary shall use information available as of January 6, 1995.

(ii) For fiscal year 1994.–In determining the amounts described in subparagraph (C) (i) for any State for fiscal year 1994, the Secretary shall use information available as of April 28, 1995

(iii) For fiscal year 1995.–

(I) In determining the amount described in subparagraph (B) (ii) (II) for any State for fiscal year 1995, the Secretary shall use the information which was reported by the States and estimates made by the States with respect to emergency assistance expenditures and was available as of August 11, 1995.

(II) In determining the amounts described in subclauses (I) through (III) of subparagraph (C) (i) for any State for fiscal year 1995, the Secretary shall use information available as of October 2, 1995.

(III) In determining the amount described in subparagraph (C) (i) (IV) for any State for fiscal year 1995, the Secretary shall use information available as of February 28, 1996.

(IV) In determining the amount described in subparagraph (C) (i) (V)

for any State for fiscal year 1995, the Secretary shall use information available as of October 5,1995.

(E) Appropriation.–Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for fiscal years 1996, 1997, 1998, 1999, 2000, 2001, and 2002 such sums as are necessary for grants under this paragraph.

(2) Bonus to reward decrease in illegitimacy.–

(A) In general.–Each eligible State shall be entitled to receive from the Secretary a grant for each bonus year for which the State demonstrates a net decrease in out-of-wedlock births.

(B) Amount of grant.–

(i) If 5 eligible states.– If there are 5 eligible States for a bonus year, the amount of the grant shall be $20,000,000.

(ii) If fewer than 5 eligible states.–If there are fewer than 5 eligible States for a bonus year, the amount of the grant shall be $25,000,000.

(C) Definitions.–As used in this paragraph:

(i) Eligible state.–

(I) In general.–The term 'eligible State' means a State that the Secretary determines meets the following requirements:

(aa) The State demonstrates that the number of out-of-wedlock births that occurred in the State during the most recent 2-year period for which such information is available decreased as compared to the number of such births that occurred during the previous 2-year period, and the magnitude of the decrease for the State for the period is not exceeded by the magnitude of the corresponding decrease for 5 or more other States for the period.

(bb) The rate of induced pregnancy terminations in the State for the fiscal year is less than the rate of induced pregnancy terminations in the State for fiscal year 1995.

(II) Disregard of changes in data due to changed reporting methods.–In making the determination required by subclause (I), the Secretary shall disregard–

(aa) any difference between the number of out-of-wedlock births that occurred in a State for a fiscal year and the number of out-of-wedlock births that occurred in a State for fiscal year 1995 which is attributable to a change in State methods of reporting data used to

calculate the number of out-of-wedlock births; and

(bb) any difference between the rate of induced pregnancy terminations in a State for a fiscal year and such rate for fiscal year 1995 which is attributable to a change in State methods of reporting data used to calculate such rate.

(ii) Bonus year.–The term 'bonus year' means fiscal years 1999, 2000, 2001, and 2002.

(D) Appropriation.– Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for fiscal years 1999 through 2002, such sums as are necessary for grants under this paragraph.

(3) Supplemental grant for population increases in certain states.– (A) In general.–Each qualifying State shall, subject to subparagraph (F), be entitled to receive from the Secretary–

(i) for fiscal year 1998 a grant in an amount equal to 2.5 percent of the total amount required to be paid to the State under former section 403 (as in effect during fiscal year 1994) for fiscal year 1994; and

(ii) for each of fiscal years 1999, 2000, and 2001, a grant in an amount equal to the sum of –

(I) the amount (if any) required to be paid to the State under this paragraph for the immediately preceding fiscal year; and

(II) 2.5 percent of the sum of–

(aa) the total amount required to be paid to the State under former section 403 (as in effect during fiscal year 1994) for fiscal year 1994; and

(bb) the amount (if any) required to be paid to the State under this paragraph for the fiscal year preceding the fiscal year for which the grant is to be made.

(B) Preservation of grant without increases for states failing to remain qualifying states.–Each State that is not a qualifying State for a fiscal year specified in subparagraph (A) (ii) but was a qualifying State for a prior fiscal year shall, subject to subparagraph (F), be entitled to receive from the Secretary for the specified fiscal year, a grant in an amount equal to the amount required to be paid to the State under this paragraph for the most recent fiscal year for which the State was a qualifying State.

(C) Qualifying state.–

(i) In general.–For purposes of this paragraph, a State is a qualifying State for a fiscal year if–

(I) the level of welfare spending per poor person by the State for the immediately preceding fiscal year is less than the national average level of State welfare spending per poor person for such preceding fiscal year; and

(II) the population growth rate of the State (as determined by the Bureau of the Census) for the most recent fiscal year for which information is available exceeds the average population growth rate for all States (as so determined) for such most recent fiscal year.

(ii) State must qualify in fiscal year 1997.–Notwithstanding clause (i), a State shall not be a qualifying State for any fiscal year after 1998 by reason of clause (i) if the State is not a qualifying State for fiscal year 1998 by reason of clause (i)

(iii) Certain states deemed qualifying states.–For purposes of this paragraph, a State is deemed to be a qualifying State for fiscal years 1998, 1999, 2000, and 2001 if–

(I) the level of welfare spending per poor person by the State for fiscal year 1994 is less than 35 percent of the national average level of State welfare spending per poor person for fiscal year1994; or

(II) the population of the State increased by more than 10 percent from April 1, 1990 to July 1, 1994, according to the population estimates in publication CB94-2O4 of the Bureau of the Census.

(D) Definitions.–As used in this paragraph:

(i) Level of welfare spending per poor person.–The term 'level of State welfare spending per poor person' means, with respect to a State and a fiscal year–

(I) the sum of–

(aa) the total amount required to be paid to the State under former section 403 (as in effect during fiscal year 1994) for fiscal year 1994; and

(bb) the amount (if any) paid to the State under this paragraph for the immediately preceding fiscal year; divided by

(II) the number of individuals, according to the 1990 decennial census, who were residents of the State and whose income was below the poverty line.

(ii) National average level of state welfare spending per poor person.–The term 'national average level of State welfare spending per poor person' means, with

respect to a fiscal year, an amount equal to–

(I) the total amount required to be paid to the States under former section 403 (as in effect during fiscal year 1994) for fiscal year 1994; divided by

(II) the number of individuals, according to the 1990 decennial census, who were residents of any State and whose income was below the poverty line.

(iii) State.–The term 'State' means each of the 50 States of the United States and the District of Columbia.

(E) Appropriation.–Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for fiscal years 1998, 1999, 2000, and 2001 such sums as are necessary for grants under this paragraph, in a total amount not to exceed $800,000,000.

(F) Grants reduced pro rata if insufficient appropriations.–If the amount appropriated pursuant to this paragraph for a fiscal year is less than the total amount of payments otherwise required to be made under this paragraph for the fiscal year, then the amount otherwise payable to any State for the fiscal year under this paragraph shall be reduced by a percentage equal to the amount so appropriated divided by such total amount.

(G) Budget scoring.–Notwithstanding section 257(b) (2) of the Balanced Budget and Emergency Deficit Control Act of 1985, the baseline shall assume that no grant shall be made under this paragraph after fiscal year 2001.

(4) Bonus to reward high performance states.–

(A) In general.–The Secretary shall make a grant pursuant to this paragraph to each State for each bonus year for which the State is a high performing State.

(B) Amount of grant.–

(i) In general.–Subject to clause (ii) of this subparagraph, the Secretary shall determine the amount of the grant payable under this paragraph to a high performing State for a bonus year, which shall be based on the score assigned to the State under subparagraph (D) (i) for the fiscal year that immediately precedes the bonus year.

(ii) Limitation.–The amount payable to a State under this paragraph for a bonus year shall not exceed 5 percent of the State family assistance grant.

(C) Formula for measuring state performance.–Not later than 1 year after the date of the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the Secretary, in consultation with the National Governors'

Association and the American Public Welfare Association, shall develop a formula for measuring State performance in operating the State program funded under this part so as to achieve the goals set forth in section 401(a).

(D) Scoring of state performance; setting of performance thresholds.–For each bonus year, the Secretary shall–

(i) use the formula developed under subparagraph (C) to assign a score to each eligible State for the fiscal year that immediately precedes the bonus year; and

(ii) prescribe a performance threshold in such a manner so as to ensure that–

(I) the average annual total amount of grants to be made under this paragraph for each bonus year equals $200,000,000; and

(II) the total amount of grants to be made under this paragraph for all bonus years equals $1,000,000,000.

(E) Definitions.–As used in this paragraph:

(i) Bonus year.–The term 'bonus year' means fiscal years 1999, 2000, 2001, 2002, and 2003.

(ii) High performing state.–The term 'high performing State' means, with respect to a bonus year, an eligible State whose score assigned pursuant to subparagraph (D) (i) for the fiscal year immediately preceding

the bonus year equals or exceeds the performance threshold prescribed under subparagraph (D) (ii) for such preceding fiscal year.

(F) Appropriation.–Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for fiscal years 1999 through 2003 $1,000,000,000 for grants under this paragraph.

(b) Contingency Fund.–

(1) Establishment.–There is hereby established in the Treasury of the United States a fund which shall be known as the 'Contingency Fund for State Welfare Programs' (in this section referred to as the 'Fund').

(2) Deposits into fund.–Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for fiscal years 1997, 1998, 1999, 2000, and 2001 such sums as are necessary for payment to the Fund in a total amount not to exceed $2,000,000,000.

(3) Grants.–

(A) Provisional payments.–If an eligible submits to the Secretary a request for funds under this paragraph during an eligible month, the Secretary shall, subject to this paragraph, pay to the State, from amounts appropriated pursuant to paragraph (2), an amount equal to the amount of funds so requested.

(B) Payment priority.–The Secretary shall make payments under subparagraph (A) in the

order in which the Secretary receives requests for such payments.

(C) Limitations.–

(i) Monthly payment to a state.–The total amount paid to a single State under subparagraph (A) during a month shall not exceed 1/12 of 20 percent of the State family assistance grant.

(ii) Payments to all states.– The total amount paid to all States under subparagraph (A) during fiscal years 1997 through 2001 shall not exceed the total amount appropriated pursuant to paragraph (2).

(4) Annual reconciliation.–Notwithstanding paragraph (3), at the end of each fiscal year, each State shall remit to the Secretary an amount equal to the amount (if any) by which the total amount paid to the State under paragraph (3) during the fiscal year exceeds–

(A) the Federal medical assistance percentage for the State for the fiscal year (as defined in section 1905(b), as in effect on September 30, 1995) of the amount (if any) by which–

(i) if the Secretary makes a payment to the State under section 418(a) (2) in the fiscal year–

(I) the expenditures under the State program funded under this part for the fiscal year, excluding any amounts made available by the Federal

Government (except amounts paid to the State under paragraph (3) during the fiscal year that have been expended by the State) and any amounts expended by the State during the fiscal year for child care; exceeds

(II) historic State expenditures (as defined in section 409(a) (7) (B) (iii)), excluding the expenditures by the State for child care under subsection (g) or (i) of section 402 (as in effect during fiscal year 1994) for fiscal year 1994 minus any Federal payment respect to such child care expenditures; or

(ii) if the Secretary does not make a payment to the State under section 418(a) (2) in the fiscal year–

(I) the expenditures under the State program funded under this part for the fiscal year (excluding any amounts made available by the Federal Government, except amounts paid to the State under paragraph (3) during the fiscal year that have been expended by the State); exceeds

(II) historic State expenditures (as defined in section 409(a) (7) (B) (iii)); multiplied by (B) 1/12 times the number of months during the fiscal year for which the Secretary makes a

payment to the State under this subsection.

(5) Eligible month.–As used in paragraph (3)(A), the term 'eligible month' means, with respect to a State, a month in the 2-month period that begins with any month for which the State is a needy State.

(6) Needy state.–For purposes of paragraph (5), a State is a needy State for a month if–

(A) the average rate of–

(i) total unemployment in such State (seasonally adjusted) for the period consisting of the most recent 3 months for which data for all States are published equals or exceeds 6.5 percent; and

(ii) total unemployment in such State (seasonally adjusted) for the 3-month period equals or exceeds 110 percent of such average rate for either (or both) of the corresponding 3-month periods ending in the 2 preceding calendar years; or

(B) as determined by the Secretary of Agriculture (in the discretion of the Secretary of Agriculture), the monthly average number of individuals (as of the last day of each month) participating in the food stamp program in the State in the then most recently concluded 3-month period for which data are available exceeds by not less than 10 percent the lesser of–

(i) the monthly average number of individuals (as of the last day of each

month) in the State that would have participated in the food stamp program in the corresponding 3-month period in fiscal year 1994 if the amendments made by titles IV and VIII of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 had been in effect throughout fiscal year 1994; or

(ii) the monthly average number of individuals (as of the last day of each month) in the State that would have participated in the food stamp program in the corresponding 3-month period in fiscal year 1995 if the amendments made by titles IV and VIII of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 had been in effect throughout fiscal year 1995.

(7) Other terms defined.–As used in this subsection:

(A) State.–The term 'State' means each of the 50 States of the United States and the District of Columbia.

(B) Secretary.–The term 'Secretary' means the Secretary of the Treasury.

(8) Annual reports.–The Secretary shall annually report to the Congress on the status of the Fund.

SEC. 404. USE OF GRANTS.

(a) General Rules.–Subject to this part, a State to which a grant is made under section 403 may use the grant–

(1) in any manner that is reasonably calculated to accomplish the purpose of this part, including to provide low income households with assistance in meeting home heating and cooling costs; or

(2) in any manner that the State was authorized to use amounts received under part A or F, as such parts were in effect on September 30, 1995.

(b) Limitation on Use of Grant for Administrative Purposes.–

(1) Limitation.–A State to which a grant is made under section 403 shall not expend more than 15 percent of the grant for administrative purposes.

(2) Exception.–Paragraph (1) shall not apply to the use of a grant for information technology and computerization needed for tracking or monitoring required by or under this part.

(c) Authority To Treat Interstate Immigrants Under Rules of Former State.–A State operating a program funded under this part may apply to a family the rules (including benefit amounts) of the program funded under this part of another State if the family has moved to the State from the other State and has resided in the State for less than 12 months

(d) Authority To Use Portion of Grant for Other Purposes.–

(1) In general.–A State may use not more than 30 percent of the amount of any grant made to the State under section 403(a) for a fiscal year to carry out a State program pursuant to any or all of the following provisions of law:

(A) Title XX of this Act.

(B) The Child Care and Development Block Grant Act of 1990.

(2) Limitation on amount transferable to title xx programs.–Notwithstanding paragraph (1), not more than \1/3\ of the total amount paid to a State under this part for a fiscal year that is used to carry out State programs pursuant to provisions of law specified in paragraph (1) may be used to carry out State programs pursuant to title xx.

(3) Applicable rules.–

(A) In general.–Except as provided in subparagraph (B) of this paragraph, any amount paid to a State under this part that is used to carry out a State program pursuant to a provision of law specified in paragraph (1) shall not be subject to the requirements of this part, but shall be subject to the requirements that apply to Federal funds provided directly under the provision of law to carry out the program, and the expenditure of any amount so used shall not be considered to be an expenditure under this part

(B) Exception relating to title xx programs.–All amounts paid to a State under this part that are used to carry out State programs pursuant to title xx shall be used only for programs and services to children or their families whose income is less than 200 percent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of

the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved.

(e) Authority to Reserve Certain Amounts for Assistance.–A State may reserve amounts paid to the State under this part for any fiscal year for the purpose of providing, without fiscal year limitation, assistance under the State program funded under this part.

(f) Authority to Operate Employment Placement Program.–A State to which a grant is made under section 403 may use the grant to make payments (or provide job placement vouchers) to State-approved public and private job placement agencies that provide employment placement services to individuals who receive assistance under the State program funded under this part.

(g) Implementation of Electronic Benefit Transfer System. –A State to which a grant is made under section 403 is encouraged to implement an electronic benefit transfer system for providing assistance under the State program funded under this part, and may use the grant for such purpose.

(h) Use of Funds for Individual Development Accounts.–

(1) In general.–A State to which a grant is made under section 403 may use the grant to carry out a program to fund individual development accounts (as defined in paragraph (2)) established by individuals eligible for assistance under the State program funded under this part.

(2) Individual development accounts.–

(A) Establishment.–Under a State program carried out under paragraph (1), an individual development account may be established by or on behalf of an individual eligible for assistance under the State program operated under this part for the purpose of enabling the individual to accumulate funds for a qualified purpose described in subparagraph (B).

(B) Qualified purpose.–A qualified purpose described in this subparagraph is 1 or more of the following, as provided by the qualified entity providing assistance to the individual under this subsection:

(i) Postsecondary educational expenses.–Postsecondary educational expenses paid from an individual development account directly to an eligible educational institution

(ii) First home purchase.–Qualified acquisition costs with respect to a qualified principal residence for a qualified first-time homebuyer, if paid from an individual development account directly to the persons to whom the amounts are due.

(iii) Business capitalization.–Amounts paid from an individual development account directly to a business capitalization account which is established in a federally insured financial institution and is restricted to use solely for qualified business capitalization expenses.

(C) Contributions to be from earned income.–An individual may only contribute to an individual development account such amounts as are derived from earned income, as defined in section 911(d) (2) of the Internal Revenue Code of 1986.

(D) Withdrawal of funds.–The Secretary shall establish such regulations as may be necessary to ensure that funds held in an individual development account are not withdrawn except for 1 or more of the qualified purposes described in subparagraph (B)

(3) Requirements.–

(A) In general.–An individual development account established under this subsection shall be a trust created or organized in the United States and funded through periodic contributions by the establishing individual and matched by or through a qualified entity for a qualified purpose (as described in paragraph (2) (B))

(B) Qualified entity.–As used in this subsection, the term 'qualified entity means–

(i)a not-for-profit organization described in section 501(c) (3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code; or

(ii) a State or local government agency acting in cooperation with an organization described in clause (i).

(4) No reduction in benefits.–Notwithstanding any other provision of Federal law (other than the Internal Revenue Code of 1986) that requires consideration of 1 or more financial circumstances of an individual, for the purpose of determining eligibility to receive, or the amount of, any assistance or benefit authorized by such law to be provided to or for the benefit of such individual, funds (including interest accruing) in an individual development account under this subsection shall be disregarded for such purpose with respect to any period during which such individual maintains or makes contributions into such an account.

(5) Definitions.–As used in this subsection–

(A) Eligible educational institution.–The term 'eligible educational institution' means the following:

(i) An institution described in section 481(a) (1) or 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1088(a) (1) or 1141(a)), as such sections are in effect on the date of the enactment of this subsection.

(ii) An area vocational education school (as defined in subparagraph (C) or (D) of section 521(4) of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2471(4))) which is in any State (as defined in section 521(33) of such Act), as such sections are in effect on the date of the enactment of this subsection.

(B) Post-secondary educational expenses.–The term post-secondary educational expenses' means–

(i) tuition and fees required for the enrollment or attendance of a student at an eligible educational institution, and

(ii) fees, books, supplies, and equipment required for courses of instruction at an eligible educational institution.

(C) Qualified acquisition costs.–The term 'qualified acquisition costs' means the costs of acquiring, constructing, or reconstructing a residence. The term includes any usual or reasonable settlement, financing, or other closing costs.

(D) Qualified business.–The term 'qualified business' means any business that does not contravene any law or public policy (as determined by the Secretary).

(E) Qualified business capitalization expenses.–The term 'qualified business capitalization expenses' means qualified expenditures for the capitalization of a qualified business pursuant to a qualified plan.

(F) Qualified expenditures.–The term 'qualified expenditures' means expenditures included in a qualified plan, including capital, plant, equipment, working capital, and inventory expenses.

(G) Qualified first-time homebuyer.–

(i) In general.–The term 'qualified first-time homebuyer' means a taxpayer (and, if married, the taxpayer's spouse) who has no present ownership interest in a principal residence during the 3-year period ending on the date of acquisition of the principal residence to which this subsection applies.

(ii) Date of acquisition.–The term 'date of acquisition' means the date on which a binding contract to acquire, construct, or reconstruct the principal residence to which this subparagraph applies is entered into.

(H) Qualified plan.–The term 'qualified plan' means a business plan which–

(i) is approved by a financial institution, or by a nonprofit loan fund having demonstrated fiduciary integrity,

(ii) includes a description of services or goods to be sold, a marketing plan, and projected financial statements, and

(iii) may require the eligible individual to obtain the assistance of an experienced entrepreneurial advisor.

(I) Qualified principal residence.–The term 'qualified principal residence' means a principal residence (within the meaning of section 1034 of the Internal Revenue Code of 1986), the qualified acquisition costs of which do not exceed 100 percent of the average area purchase price applicable to such residence

(determined in accordance with paragraphs (2) and (3) of section 143(e) of such Code).

(i) Sanction Welfare Recipients for Failing To Ensure That Minor Dependent Children Attend School.–A State to which a grant is made under section 403 shall not be prohibited from sanctioning a family that includes an adult who has received assistance under any State program funded under this part attributable to funds provided by the Federal Government or under the food stamp program, as defined in section 3(h) of the Food Stamp Act of 1977, if such adult fails to ensure that the minor dependent children of such adult attend school as required by the law of the State in which the minor children reside.

(j) Requirement for High School Diploma or Equivalent.–A State to which a grant is made under section 403 shall not be prohibited from sanctioning a family that includes an adult who is older than age 20 and younger than age 51 and who has received assistance under any State program funded under this part attributable to funds provided by the Federal Government or under the food stamp program, as defined in section 3(h) of the Food Stamp Act of 1977, if such adult does not have, or is not working toward attaining, a secondary school diploma or its recognized equivalent unless such adult has been determined in the judgment of medical, psychiatric, or other appropriate professionals to lack the requisite capacity to complete successfully a course of study that would lead to a secondary school diploma or its recognized equivalent.

SEC. 405. ADMINISTRATIVE PROVISIONS.

(a) Quarterly.–The Secretary shall pay each grant payable to a State under section 403 in quarterly installments, subject to this section.

(b) Notification.–Not later than 3 months before the payment of any such quarterly installment to a State, the Secretary shall notify the State of the amount of any reduction determined under section 412(a) (1) (B) with respect to the State.

(c) Computation and Certification of Payments to States.–

(1) Computation.–The Secretary shall estimate the amount to be paid to each eligible State for each quarter under this part, such estimate to be based on a report filed by the State containing an estimate by the State of the total sum to be expended by the State in the quarter under the State program funded under this part and such other information as the Secretary may find necessary.

(2) Certification.–The Secretary of Health and Human Services shall certify to the Secretary of the Treasury the amount estimated under paragraph (1) with respect to a State, reduced or increased to the extent of any overpayment or underpayment which the Secretary of Health and Human Services determines was made under this part to the State for any prior quarter and with respect to which adjustment has not been made under this paragraph.

(d) Payment Method.–Upon receipt of a certification under subsection (c) (2) with respect to a State, the Secretary of the Treasury shall, through

the Fiscal Service of the Department of the Treasury and before audit or settlement by the General Accounting Office, pay to the State, at the time or times fixed by the Secretary of Health and Human Services, the amount so certified.

SEC. 406. FEDERAL LOANS FOR STATE WELFARE PROGRAMS.

(a) Loan Authority.–

(1) In general.–The Secretary shall make loans to any loan-eligible State, for a period to maturity of not more than 3 years.

(2) Loan-eligible state.–As used in paragraph (1), the term 'loan-eligible State' means a State against which a penalty has not been imposed under section 409(a) (1).

(b) Rate of Interest.–The Secretary shall charge and collect interest on any loan made under this section at a rate equal to the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the period to maturity of the loan.

(c) Use of Loan.–A State shall use a loan made to the State under this section only for any purpose for which grant amounts received by the State under section 403(a) may be used, including-

(1) welfare anti-fraud activities; and

(2) the provision of assistance under the State program to Indian families that have moved from the service area of an Indian tribe with a tribal family assistance plan approved under section 412.

(d) Limitation on Total Amount of Loans to a State.–The cumulative dollar amount of all loans made to a State under this section during fiscal years 1997 through 2002 shall not exceed 10 percent of the State family assistance grant.

(e) Limitation on Total Amount of Outstanding Loans.–The total dollar amount of loans outstanding under this section may not exceed $1,700,000,000.

(f) Appropriation.–Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated such sums as may be necessary for the cost of loans under this section.

SEC. 407. MANDATORY WORK REQUIREMENTS.

(a) Participation Rate Requirements.–

(1) All families.–A State to which a grant is made under section 403 for a fiscal year shall achieve the minimum participation rate specified in the following table for the fiscal year with respect to all families receiving assistance under the State program funded under this part:

If the fiscal year is:	The minimum participation rate is:
1997	25
1998	30
1999	35
2000	40
2001	45
2002 or thereafter	50.

(2) 2-parent families.–A State to which a grant is made under section 403 for a fiscal year shall achieve the minimum participation rate specified in

the following table for the fiscal year with respect to 2-parent families receiving assistance under the State program funded under this part:

If the fiscal year is:	The minimum participation rate is:
1997	75
1998	75
1999 or thereafter	90.

(b) Calculation of Participation Rates.–

(1) All families.–

(A) Average monthly rate.–For purposes of subsection (a) (1), the participation rate for all families of a State for a fiscal year is the average of the participation rates for all families of the State for each month in the fiscal year.

(B) Monthly participation rates.–The participation rate of a State for all families of the State for a month, expressed as a percentage, is–

(i) the number of families receiving assistance under the State program funded under this part that include an adult or a minor child head of household who is engaged in work for the month; divided by

(ii) the amount by which–

(I) the number of families receiving such assistance during the month that include an adult or a minor child head

of household receiving such assistance; exceeds

(II) the number of families receiving such assistance that are subject in such month to a penalty described in subsection (e) (1) but have not been subject to such penalty for more than 3 months within the preceding 12-month period (whether or not consecutive).

(2) 2-parent families.–

(A) Average monthly rate.–For purposes of subsection (a) (2), the participation rate for 2-parent families of a State for a fiscal year is the average of the participation rates for 2-parent families of the State for each month in the fiscal year.

(B) Monthly participation rates.–The participation rate of a State for 2-parent families of the State for a month shall be calculated by use of the formula set forth in paragraph (1) (B), except that in the formula the term 'number of 2-parent families' shall be substituted for the term 'number of families' each place such latter term appears.

(3) Pro rata reduction of participation rate due caseload reductions not required by federal law.–

(A) In general.– The Secretary shall prescribe regulations for reducing the minimum participation rate otherwise required by this

section for a fiscal year by the number of percentage points equal to the number of percentage points (if any) by which–

(i) the average monthly number of families receiving assistance during the immediately preceding fiscal year under the State program funded under this part is less than

(ii) the average monthly number of families that received aid under the State plan approved under part A (as in effect on September 30, 1995) during fiscal year 1995.

The minimum participation rate shall not be reduced to the extent that the Secretary determines that the reduction in the number of families receiving such assistance is required by Federal law.

(B) Eligibility changes not counted.–The regulations required by subparagraph (A) shall not take into account families that are diverted from a State program funded under this part as a result of differences in eligibility criteria under a State program funded under this part and eligibility criteria under the State program operated under the State plan approved under part A (as such plan and such part in effect on September 30, 1995). Such regulations shall place the burden on the Secretary to prove that such families were diverted as a direct result of differences in such eligibility criteria.

(4) State option to include individuals receiving assistance under a tribal family assistance plan.–For purposes of paragraphs (1) (B) and (2) (B), a State may, at its option, include families in the State that are receiving assistance under a tribal family assistance plan approved under section 412.

(5) State option for participation requirement exemptions.–For any fiscal year, a State may, at its option, not require an individual who is a single custodial parent caring for a child who has not attained 12 months of age to engage in work, and may disregard such an individual in determining the participation rates under subsection (a) for not more than 12 months.

(c) Engaged in Work.–

(1) General rules.–

(A) All families.–For purposes of subsection (b) (1) (B) (i), a recipient is engaged in work for a month in a fiscal year if the recipient is participating in work activities for at least the minimum average number of hours per week specified in the following table during the month, not fewer than 20 hours per week of which are attributable to an activity described in paragraph (1), (2), (3), (4), (5), (6), (7), (8), or (12) of subsection (d), subject to this subsection:

If the month is in fiscal year:	The minimum average number of hours per week is:
1997	20
1998	20
1999	25
2000 or thereafter	30.

(B) 2-parent families.– For purposes of subsection b) (2) (B), an individual is engaged in work for a month in a fiscal year if–

(i) the individual is making progress in work activities for at least 35 hours per week during the month, not fewer than 30 hours per week of which are attributable to an activity described in paragraph (1), (2), (3), (4), (5), (6), (7), (8), or (12) of subsection (d), subject to this subsection; and

(ii) if the family of the individual receives federally-funded child care assistance and an adult in the family is not disabled or caring for a severely disabled child, the individual's spouse is making progress in work activities during the month, not fewer than 20 hours per week of which are attributable to an activity described in paragraph (1), (2), (3), (4), (5), or (7) of subsection (d).

(2) Limitations and special rules.–

(A) Number of weeks for which job search counts as work. –

(i) Limitation. –Notwithstanding paragraph (1) of this subsection, an individual shall not be considered to be engaged in work by virtue of participation in an activity described in subsection (d) (6) of a State program funded under this part, after the individual has participated in such an activity for 6 weeks (or, if the unemployment rate of the State is at least 50 percent greater than the unemployment rate of the United States, 12 weeks), or if the participation is for a week that immediately follows 4 consecutive weeks of such participation.

(ii) Limited authority to count less than full week of participation.–For purposes of clause (i) of this subparagraph, on not more than 1 occasion per individual, the State shall consider participation of the individual in an activity described in subsection (d) (6) for 3 or 4 days during a week as a week of participation in the activity by the individual.

(B) Single parent with child under age 6 deemed to be meeting work participation requirements if parent is engaged in work for 20 hours per week.–For purposes of determining monthly participation rates under subsection (b) (1) (B) (i), a recipient in a 1-parent family who is the parent of a child who has not attained 6 years of age is deemed to be engaged in work for a month if the recipient is

engaged in work for an average of at least 20 hours per week during the month.

(C) Teen head of household who maintains satisfactory school attendance deemed to be meeting work participation requirements.–For purposes of determining monthly participation rates under subsection (b) (1) (B) (i), a recipient who is a single head of household and has not attained 20 years of age is deemed, subject to subparagraph (D) of this paragraph, to be engaged in work for a month in a fiscal year if the recipient–

(i) maintains satisfactory attendance at secondary school or the equivalent during the month; or

(ii) participates in education directly related to employment for at least the minimum average number of hours per week specified in the table set forth in paragraph (1) (A) of this subsection.

(D) Number of persons that may be treated as engaged in work by virtue of participation in vocational education activities or being a teen head of household who maintains satisfactory school attendance.–For purposes of determining monthly participation rates under paragraphs (1) (B) (i) and (2) (B) of subsection (b), not more than 20 percent of individuals in all families and in 2-parent families may be determined to be engaged in work in the State for a month by reason of participation in vocational educational training or deemed to

engaged in work by reason of subparagraph (C) of this paragraph.

(d) Work Activities Defined.–As used in this section, the term 'work activities' means–

(1) unsubsidized employment;

(2) subsidized private sector employment;

(3) subsidized public sector employment;

(4) work experience (including work associated with the refurbishing of publicly assisted housing) if sufficient private sector employment is not available;

(5) on-the-job training;

(6) job search and job readiness assistance;

(7) community service programs;

(8) vocational educational training (not to exceed 12 months with respect to any individual);

(9) job skills training directly related to employment;

(10) education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency;

(11) satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate; and

(12) the provision of child care services to an individual who is participating in a community service program.

(e) Penalties Against Individuals.–

(1) In general.–Except as provided in paragraph (2), if an individual in a family receiving assistance under the State program funded under this part refuses to engage in work required in accordance with this section, the State shall–

(A) reduce the amount of assistance otherwise payable to the family pro rata (or more, at the option of the State) with respect to any period during a month in which the individual so refuses; or

(B) terminate such assistance, subject to such good cause and other exceptions as the State may establish.

(2) Exception.–Notwithstanding paragraph (1), a State may not reduce or terminate assistance under the State program funded under this part based on a refusal of an individual to work if the individual is a single custodial parent caring for a child who has not attained 6 years of age, and the individual proves that the individual has a demonstrated inability (as determined by the State) to obtain needed child care, for 1 or more of the following reasons:

(A) Unavailability of appropriate child care within a reasonable distance from the individual's home or work site.

(B) Unavailability or unsuitability of informal child care by a relative or under other arrangements.

(C) Unavailability of appropriate and affordable formal child care arrangements.

(f) Nondisplacement in Work Activities.–

(1) In general.–Subject to paragraph (2), an adult in a family receiving assistance under a State program funded under this part attributable to funds provided by the Federal Government may fill a vacant employment position in order engage in a work activity described in subsection (d).

(2) No filling of certain vacancies.–No adult in a work activity described in subsection (d) which is funded, in whole or in part, by funds provided by the Federal Government shall be employed or assigned–

(A) when any other individual is on layoff from the same or any substantially equivalent job; or

(B) if the employer has terminated the employment of any regular employee or otherwise caused an involuntary reduction of its workforce in order to fill he vacancy so created with an adult described in paragraph (1).

(3) Grievance procedure.–A State with a program funded under this part shall establish and maintain a grievance procedure for resolving complaints of alleged violations of paragraph (2).

(4) No preemption.–Nothing in this subsection shall preempt or supersede any provision of State or local law that provides greater protection for employees from displacement.

(g) Sense of the Congress.–It is the sense of the Congress that in complying with this section, each State that operates a program funded under this part is encouraged to assign the highest priority to requiring adults in 2-parent families and adults in single-parent families that include older preschool or school-age children to be engaged in work activities.

(h) Sense of the Congress That States Should Impose Certain Requirements on Noncustodial, Nonsupporting Minor Parents.–It is the sense of the Congress that the States should require noncustodial, nonsupporting parents who have not attained 18 years of age to fulfill community work obligations and attend appropriate parenting or money management classes after school.

(i) Review of Implementation of State Work Programs.–During fiscal year 1999, the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate shall hold hearings and engage in other appropriate activities to review the implementation of this section by the States, and shall invite the Governors of the States to testify before them regarding such implementation. Based on such hearings, such Committees may introducesuch legislation as may be appropriate to remedy any problems with the State programs operated pursuant to this section.

SEC. 408. PROHIBITIONS; REQUIREMENTS.

(a) In General.–

(1) No assistance for families without a minor child.–A State to which a grant is made under section 403 shall not use any part of the grant to provide assistance to a family–

(A) unless the family includes–

(i) a minor child who resides with a custodial parent or other adult caretaker relative of the child; or

(ii) a pregnant individual; and

(B) if the family includes an adult who has received assistance under any State program funded under this part attributable to funds provided by the Federal Government, for 60 months (whether or not consecutive) after the date the State program funded under this commences (unless an exception described in subparagraph (B), (C), or (D) of paragraph (7) applies).

(2) Reduction or elimination of assistance for noncooperation in establishing paternity or obtaining child support.–If the agency responsible for administering the State plan approved under part D determines that an individual is not cooperating with the State in establishing paternity or in establishing, modifying, or enforcing a support order with respect to a child of the individual, and the individual does not qualify for any good cause or other exception established by the State pursuant to section 454(29), then the State–

(A) shall deduct from the assistance that would otherwise be provided to the family of the

individual under the State program funded under this part an amount equal to not less than 25 percent of the amount of such assistance; and

(B) may deny the family any assistance under the State program.

(3) No assistance for families not assigning certain support rights to the state.–

(A) In general.–A State to which a grant is made under section 403 shall require, as a condition of providing assistance to a family under the State program funded under this part, that a member of the family assign to the State any rights the family member may have (on behalf of the family member or of any person for whom the family member has applied for or is receiving such assistance) to support from any other person, not exceeding the total amount of assistance so provided to the family, which accrue (or have accrued) before the date the family leaves the program, which assignment, on and after the date the family leaves the program, shall not apply with respect to any support (other than support collected pursuant to section 464) which accrued before the family received such assistance and which the State has not collected by–

(i) September 30, 2000, if the assignment is executed on or after October 1, 1997, and before October 1, 2000; or

(ii) the date the family leaves the program, if the assignment is executed on or after October 1, 2000.

(B) Limitation.–A State to which a grant is made under section 403 shall not require, as a condition of providing assistance to any family under the State program funded under this part, that a member of the family assign to the State any rights to support described in subparagraph (A) which accrue after the date the family leaves the program.

(4) No assistance for teenage parents who do not attend high school or other equivalent training program.–A State to which a grant is made under section 403 shall not use any part of the grant to provide assistance to an individual who has not attained 18 years of age, is not married, has a minor child at least 12 weeks of age in his or her care, and has not successfully completed a high-school education (or its equivalent), if the individual does not participate in–

(A) educational activities directed toward the attainment of a high school diploma or its equivalent; or

(B) an alternative educational or training program that has been approved by the State.

(5) No assistance for teenage parents not living in adult-supervised settings. –

(A) In general.–

(i) Requirement.–Except as provided subparagraph (B), a State to which a grant

is made under section 403 shall not use any part of the grant to provide assistance to an individual described in clause (ii) of this subparagraph if the individual and the minor child referred to in clause (ii) (II) do not reside in a place of residence maintained by a parent, legal guardian, or other adult relative of the individual as such parent's, guardian's, or adult relative's own home.

(ii) Individual described.–For purposes of clause (i), an individual described in this clause is an individual who–

(I) has not attained 18 years of age; and

(II) is not married, and has a minor child in his or her care.

(B) Exception.–

(i) Provision of, or assistance in locating, adult-supervised living arrangement.–In the case of an individual who is described in clause (ii), the State agency referred to in section 402(a) (4) shall provide, or assist the individual in locating, a second chance home, maternity home, or other appropriate adult-supervised supportive living arrangement, taking into consideration the needs and concerns of the individual, unless State agency determines that the individual's current living arrangement is appropriate, and thereafter shall require that the individual

and the minor child referred to in subparagraph (A) (ii) (II) reside in such living arrangement as a condition of the continued receipt of assistance under the State program funded under this part attributable to funds provided by the Federal Government (or in an alternative appropriate arrangement, should circumstances change and the current arrangement cease to be appropriate).

(ii) Individual described.–For purposes of clause (i), an individual is described in this clause if the individual is described in subparagraph (A) (ii), and–

(I) the individual has no parent, legal guardian, or other appropriate adult relative described in subclause (II) of his or her own who is living or whose whereabouts are known;

(II) no living parent, legal guardian, or other appropriate adult relative, who would otherwise meet applicable State criteria to act as the individual's legal guardian, of such individual allows the individual to live in the home of such parent, guardian, or relative;

(III) the State agency determines that–

(aa) the individual or the minor child referred to in subparagraph (A) (ii) (II) is being or has been subjected to serious physical or

emotional harm, sexual abuse, or exploitation in the residence of the individual's own parent or legal guardian; or

(bb) substantial evidence exists of an act or failure to act that presents an imminent or serious harm if the individual and the minor child lived in the same residence with the individual's own parent or legal guardian; or

(IV) the State agency otherwise determines that it is in the best interest of the minor child to waive the requirement of subparagraph (A) with respect to the individual or the minor child.

(iii) Second-chance home.–For purposes of this subparagraph, the term 'second-chance home' means an entity that provides individuals described in clause (ii) with a supportive and supervised living arrangement in which such individuals are required to learn parenting skills, including child development, family budgeting, health and nutrition, and other skills to promote their long-term economic independence and the well-being of their children.

(6) No medical services.–

(A) In general.–A State to which a grant is made under section 403 shall not use any part of the grant to provide medical services.

(B) Exception for prepregnancy family planning services.–As used in subparagraph (A), the 'medical services' does not include prepregnancy family planning services.

(7) No assistance for more than 5 years.–

(A) In general.–A State to which a grant is made under section 403 shall not use any part of the grant to provide assistance to a family that includes an adult who has received assistance under any State program funded under this part attributable to funds provided by the Federal Government, for 60 months (whether or not consecutive) after the date the State program under this part commences, subject to this paragraph.

(B) Minor child exception.–In determining the number of months for which an individual who is a parent or pregnant has received assistance under the State program funded under this part, the State shall disregard any month for which such assistance was provided with respect to the individual and during which the individual was–

(i) a minor child; and

(ii) not the head of a household or married to the head of a household.

(C) Hardship exception.–

(i) In general.–The State may exempt a family from the application of subparagraph (A) by reason of hardship or if the family includes an individual who has been battered or subjected to extreme cruelty.

(ii) Limitation.–The number of families with respect to which an exemption made by a State under clause (i) is in effect for a fiscal year shall not exceed 20 percent of the average monthly number of families to which assistance is provided under the State program funded under this part.

(iii) Battered or subject to extreme cruelty defined.–For purposes of clause (i), an individual has been battered or subjected to extreme cruelty if the individual has been subjected to–

(I) physical acts that resulted in, or threatened to result in, physical injury to the individual;

(II) sexual abuse;

(III) sexual activity involving a dependent child;

(IV) being forced as the caretaker relative of a dependent child to engage in nonconsensual sexual acts activities;

(V) threats of, or attempts at, physical or sexual abuse;

(VI) mental abuse; or

(VII) neglect or deprivation of medical care.

(D) Disregard of months of assistance received by adult while living on an Indian reservation or in an Alaskan native village with 50 percent unemployment.– In determining the number of months for which an adult has received assistance under the State program funded under this part, the State shall disregard any month during which the adult lived on an Indian reservation or in an Alaskan Native village if, during the month–

(i) at least 1,000 individuals were living on the reservation or in the village ; and

(ii) at least 50 percent of the adults living on the reservation or in the village were unemployed.

(E) Rule of interpretation.–Subparagraph (A) shall not be interpreted to require any State to provide assistance to any individual for any period of time under the State program funded under this part.

'(F) Rule of interpretation.–This part shall not be interpreted to prohibit any State from expending State funds not originating with the Federal Government on benefits for children or families that have become ineligible for assistance under the State program funded under this part by reason of subparagraph (A).

(8) Denial of assistance for 10 years to a person found to have fraudulently misrepresented residence in order to obtain assistance in 2 or more states.–A State to which a grant is made under section 403 shall not use any part of the grant to provide cash assistance to an individual during the 10-year period that begins on the date the individual is convicted in Federal or State court of having made a fraudulent statement or representation with respect to the place of residence of the individual in order to receive assistance simultaneously from or more States under programs that are funded under this title, title XIX, or the Food Stamp Act of 1977, or benefits in 2 or more States under the supplemental security income program under title XVI. The preceding sentence shall not apply with respect to a conviction of an individual, for any month beginning after the President of the United States grants a pardon with respect to the conduct which was the subject of the conviction.

(9) Denial of assistance for fugitive felons and probation and parole violators.–

(A) In general.–A State to which a grant is made under section 403 shall not use any part of the grant to provide assistance to any individual who is–

(i) fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which the individual flees, for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the individual flees, or which, in the case of

the State of New Jersey, is a high misdemeanor under the laws of such State; or

(ii) violating a condition of probation or parole imposed under Federal or State law. The preceding sentence shall not apply with respect to conduct of an individual, for any month beginning after the President of the United States grants a pardon with respect to the conduct.

(B) Exchange of information with law enforcement agencies.–If a State to which a grant is made under section 403 establishes safeguards against the use or disclosure of information about applicants or recipients of assistance under the State program funded under this part, the safeguards shall not prevent the State agency administering the program from furnishing a Federal, State, or local law enforcement officer, upon the request of the officer, with the current address of any recipient if the officer furnishes the agency with the name of the recipient and notifies the agency that–

(i) the recipient–

(I) is described in subparagraph (A); or

(II) has information that is necessary for the officer to conduct the official duties of the officer;

(ii) the location or apprehension of the recipient is within such official duties.

(10)Denial of assistance for minor children who are absent from the home for a significant period.–

(A) In general.–A State to which a grant is made under section 403 shall not use any part of the grant to provide assistance for a minor child who has been, or is expected by a parent (or other caretaker relative) of the child to be, absent from the home for a period of 45 consecutive days or, at the option of the State, such period of not less than 30 and not more than 180 consecutive days as the State may provide for in the State plan submitted pursuant to section 402.

(B) State authority to establish good cause exceptions.–The State may establish such good cause exceptions to subparagraph (A) as the State considers appropriate if such exceptions are provided for in State plan submitted pursuant to section 402.

(C) Denial of assistance for relative who fails to notify state agency of absence of child.–A State to which a grant is made under section 403 shall not use any part of the grant to provide assistance for an individual who is a parent (or other caretaker relative) of a minor child and who fails to notify the agency administering the State program funded under this part of the absence of the minor child from the home for the period specified in or provided for pursuant to subparagraph (A), by the end of

the 5-day period that begins with the date that it becomes clear to the parent (or relative) that the minor child will be absent for such period so specified or provided for.

(11) Medical assistance required to be provided for certain families having earnings from employment or child support. –

(A) Earnings from employment.–A State to which a grant is made under section 403 and which has a State plan approved under title XIX shall provide that in the case of a family that is treated (under section 1931(b) (1) (A) for purposes of title XIX) as receiving aid under a State plan approved under this part (as in effect on July 16, 1996), that would become ineligible for such aid because of hours of or income from employment of the caretaker relative (as defined under this part as in effect on such date) or because of section 402(a) (8) (B) (ii) (II) (as so in effect), and that was so treated as receiving such aid in at least 3 of the 6 months immediately preceding the month in which such ineligibility begins, the family shall remain eligible for medical assistance under the State's plan approved under title XIX for an extended period or periods as provided in section 1925 or 1902(e) (1) (as applicable), and that the family will be appropriately notified of such extension as required by section 1925 (a) (2).

(B) Child support.–A State to which a grant is made under section 403 and which has a State plan approved under title XIX shall provide

that in the case of a family that is treated (under section 1931(b) (1) (A) for purposes of title XIX) as receiving aid under a State plan approved under this part (as in effect July 16, 1996), that would become ineligible for such aid as a result (wholly or partly) of the collection of child or spousal support under part D and that was so treated as receiving such aid in at least 3 of the 6 months immediately preceding the month in which such ineligibility begins, the family shall remain eligible for medical assistance under the State's plan approved under title XIX for an extended period or periods as provided in section 1931(c) (1)

(b) Individual Responsibility Plans.–

(1) Assessment.–The State agency responsible for administering the State program funded under this part shall make an initial assessment of the skills, prior experience, and employability of each recipient of assistance under the program who–

(A) has attained 18 years of age; or

(B) has not completed high school or obtained a certificate of high school equivalency, and is not attending secondary school.

(2) Contents of plans.–

(A) In general.–On the basis of the assessment made under subsection (a) with respect to an individual, the State agency, in consultation

with the individual, may develop an individual responsibility plan for the individual which–

(i) sets forth an employment goal for the individual and a plan for moving the individual immediately into private sector employment;

(ii) sets forth the obligations of the individual, which may include a requirement that the individual attend school, maintain certain grades and attendance, keep school age children of the individual in school, immunize children, attend parenting and money management classes, or do other things that will help the individual become and remain employed in the private sector;

(iii) to the greatest extent possible is designed to move the individual into whatever private sector employment the individual is capable of handling as quickly as possible, and to increase the responsibility and amount of work the individual is to handle over time;

(iv) describes the services the State will provide the individual so that the individual will be able to obtain and keep employment in the private sector, and describe the job counseling and other services that will be provided by the State; and

(v) may require the individual to undergo appropriate substance abuse treatment.

(B) Timing.–The State agency may comply with paragraph (1) with respect to an individual–

(i) within 90 days (or, at the option of the State, 180 days) after the effective date of this part, in the case of an individual who, as of such effective date, is a recipient of aid under the State plan approved under part A (as in effect immediately before such effective date); or

(ii) within 30 days (or, at the option of the State, 90 days) after the individual is determined to be eligible for such assistance, in the case of any other individual.

(3) Penalty for noncompliance by individual.–In addition to any other penalties required under the State program funded under this part, the State may reduce, by such amount as the State considers appropriate, the amount of assistance otherwise payable under the State program to a family that includes an individual who fails without good cause to comply with an individual responsibility plan signed by the individual.

(4) State discretion.–The exercise of the authority of this subsection shall be within the sole discretion of the State.

(c) Nondiscrimination Provisions.–The following provisions of law shall apply to any program or activity which receives funds provided under this par

(1) The Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.).

(2) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

(3) The Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

(4) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.)

(d) Aliens.– For special rules relating to the treatment of aliens, see section 402 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

SEC. 409. PENALTIES.

(a) In General.–Subject to this section:

(1) Use of grant in violation of this part.–

(A) General penalty.–If an audit conducted under chapter 75 of title 31, United States Code, finds that an amount paid to a State under section 403 for a fiscal year has been used in violation of this part, the Secretary shall reduce the grant payable to the State under section 403(a) (1) for the immediately succeeding fiscal year quarter by the amount so used.

(B) Enhanced penalty for intentional violations.– If the State does not prove to the satisfaction of the Secretary that the State did not intend to use the amount in violation of this part, the Secretary shall further reduce the grant payable to the State under section 403(a) (1) for the immediately succeeding fiscal year quarter

by an amount equal to 5 percent of the State family assistance grant.

(2) Failure to submit required report.–

(A) In general.–If the Secretary determines that a State has not, within 1 month after the end of a fiscal quarter, submitted the report required by section 411(a) for the quarter, the Secretary shall reduce the grant payable to the State under section 403(a) (1) for the immediately succeeding fiscal year by an amount equal to 4 percent of the State family assistance grant.

(B) Rescission of penalty.–The Secretary shall rescind a penalty imposed on a State under subparagraph (A) with respect to a report if the State submits the report before the end of the fiscal quarter that immediately succeeds the fiscal quarter for which the report was required.

(3) Failure to satisfy minimum participation rates.–

(A In general.–If the Secretary determines that a State to which a grant is made under section 403 for a fiscal year has failed to comply with section 407(a) for the fiscal year, the Secretary shall reduce the payable to the State under section 403(a) (1) for the immediately succeeding fiscal year by an amount equal to not more than the applicable percentage of the State family assistance grant.

(B) Applicable percentage defined.–As used in subparagraph (A), the term 'applicable percentage' means, with respect to a State–

(i) if a penalty was not imposed on the State under subparagraph (A) for the immediately preceding fiscal year, 5 percent; or

(ii) if a penalty was imposed on the State under subparagraph (A) for the immediately preceding fiscal year, the lesser of–

(I) the percentage by which the grant payable to the State under section 403(a) (1) was reduced for such preceding fiscal year, increased by 2 percentage points; or

(II) 21 percent.

(C) Penalty based on severity of failure.–The Secretary shall impose reductions under subparagraph (A) with respect to a fiscal year based on the degree of noncompliance, and may reduce the penalty if the noncompliance is due to circumstances that caused the State to become a needy State (as defined in section 403(b) (6)) during the fiscal year.

(4) Failure to participate in the income and eligibility verification system.–If the Secretary determines that a State program funded under this part is not participating during a fiscal year in the income and eligibility verification system required by section 1137, the Secretary shall reduce the grant payable to the State under section 403(a) (1) for the immediately succeeding fiscal year by an amount equal to not more than 2 percent of the State family assistance grant.

(5) Failure to comply with paternity establishment and child support enforcement requirements under part d.– Notwithstanding any other provision of this Act, if the Secretary determines that the State agency that administers a program funded under this part does not enforce the penalties requested by the agency administering part D against recipients of assistance under the State program who fail to cooperate in establishing paternity or in establishing, modifying, or enforcing a child support order in accordance with such part and who do not qualify for any good cause or other exception established by the State under section 454(29), the Secretary shall reduce the grant payable to the State under section 403 (a) (1) for the immediately succeeding fiscal year (without regard to this section) by not more than 5 percent.

(6) Failure to timely repay a federal loan fund for state welfare programs.–If the Secretary determines that a State has failed to repay any amount borrowed from the Federal Loan Fund for State Welfare Programs established under section 406 within the period of maturity applicable to the loan, plus any interest owed on the loan, the Secretary shall reduce the grant payable to the State under section 403(a) (1) for the immediately succeeding fiscal year quarter (without regard to this section) by the outstanding loan amount, plus the interest owed on the outstanding amount. The Secretary shall not forgive any outstanding loan amount or interest owed on the outstanding amount.

(7) Failure of any state to maintain certain level of historic effort. –

(A) In general.– The Secretary shall reduce the grant payable to the State under section 403(a)(1) for fiscal year 1998, 1999, 2000, 2001, 2002, or 2003 by the amount (if any) by which qualified State expenditures for the then immediately preceding fiscal year are less than the applicable percentage of historic State expenditures with respect to such preceding fiscal year.

(B) Definitions.–As used in this paragraph:

(i) Qualified state expenditures.–

(I) In general.–The term 'qualified State expenditures' means, with respect to a State and a fiscal year, the total expenditures by the State during the fiscal year, under all State programs, for any of the following with respect to eligible families:

(aa) Cash assistance.

(bb) Child care assistance.

(cc) Educational activities designed to increase self-sufficiency, job training, and work, excluding any expenditure for public education in the State except expenditures which involve the provision of services or assistance to a member of an eligible family which is not generally available to persons

who are not members of an eligible family.

(dd) Administrative costs in connection with the matters described in items (aa), (bb), (cc), and (ee), but only to the extent that such costs do not exceed 15 percent of the total amount of qualified State expenditures for the fiscal year.

(ee) Any other use of funds allowable under section 404(a)(1).

(II) Exclusion of transfers from other state and local programs.–Such term does not include expenditures under any State or local program during a fiscal year, except to the extent that–

(aa) the expenditures exceed the amount expended under the State or local program in the fiscal year most recently ending before the date of the enactment of this part; or

(bb) the State is entitled to a payment under former section 403 (as in effect immediately before such date of enactment) with respect to the expenditures.

(III) Eligible families.–As used in subclause (I), the term 'eligible

families' means families eligible for assistance under the State program funded under this part, and families that would be eligible for such assistance but for the application of section 408(a) (7) of this Act or section 402 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(ii) Applicable percentage.–The term 'applicable percentage' means for fiscal years 1997 through 2002, 80 percent (or, if the State meets the requirements of section 407(a) for the fiscal year, 75 percent) reduced (if appropriate) in accordance with subparagraph (C) (ii).

(iii) Historic state expenditures.–The term 'historic State expenditures' means, with respect to a State, the lesser of–

(I) the expenditures by the State under parts A and F (as in effect during fiscal year 1994) for fiscal year 1994; or

(II) the amount which bears the same ratio to the amount described in subclause (I) as–

(aa) the State family assistance grant, plus the total amount required to be paid to the State under former section 403 for fiscal year 1994 with respect to amounts expended by the State

for child care under subsection (g) or (i) of section 402 (as in effect during fiscal year 1994); bears to

(bb) the total amount required to be paid to the State under former section 403 (as in effect during fiscal year 1994) for fiscal year 1994. Such term does not include any expenditures under the State plan approved under part A (as so in effect) on behalf of individuals covered by a tribal family assistance plan approved under section 412, as determined by the Secretary.

(iv) Expenditures by the state.– The term 'expenditures by the State' does not include–

(I) any expenditures from amounts made available by the Federal Government;

(II) any State funds expended for the medicaid program under title XIX;

(III) any State funds which are used to match Federal funds; or

(IV) any State funds which are expended as a condition of receiving Federal funds under Federal programs other than under this part. Notwithstanding subclause (IV) of the preceding sentence, such term

includes expenditures by a State for child care in a fiscal year to the extent that the total amount of such expenditures does not exceed an amount equal to the amount of State expenditures in fiscal year 1994 or 1995 (whichever is greater) that equal the non-Federal share for the programs described in section 418(a) (1) (A)

(8) Substantial noncompliance of state child support enforcement program with requirements of part d.–

(A) In general.–If a State program operated under part D is found as a result of a review conducted under section 452(a) (4) not to have complied substantially with the requirements of such part for any quarter, and the Secretary determines that the program is not complying substantially with such requirements at the time the finding is made, the Secretary shall reduce the grant payable to the State under section 403(a) (1) for the quarter and each subsequent quarter that ends before the 1st quarter throughout which the program is found to be in substantial compliance with such requirements by–

(i) not less than 1 nor more than 2 percent;

(ii) not less than 2 nor more than 3 percent, if the finding is the 2nd

consecutive such finding made as a result of such a review; or

(iii) not less than 3 nor more than 5 percent, if the finding is the 3rd or a subsequent consecutive such finding made as a result of such a review.

(B) Disregard of noncompliance which is of a technical nature.–For purposes of subparagraph (A) and section 452 (a) (4), a State which is not in full compliance with the requirements of this part shall be determined to be in substantial compliance with such requirements only if the Secretary determines that any noncompliance with such requirements is of a technical nature which does not adversely affect the performance of the State's program operated under part D.

(9) Failure to comply with 5-year limit on assistance.–If the Secretary determines that a State has not complied with section 408(a) (1) (B) during a fiscal year, the Secretary shall reduce the grant payable to the State under section 403(a) (1) for the immediately succeeding fiscal year by an amount equal to 5 percent of the State family assistance grant.

(10) Failure of state receiving amounts from contingency fund to maintain 100 percent of historic effort.–If, at the end of any fiscal year during which amounts from the Contingency Fund for State Welfare Programs have been paid to a State, the Secretary finds that the expenditures under the State program funded under this part for

the fiscal year (excluding any amounts made available by the Federal Government) are less than 100 percent of historic State expenditures (as defined in paragraph (7) (B) (iii) of this subsection), the Secretary shall reduce the grant payable to the State under section 403(a) (1) for the immediately succeeding fiscal year by the total of the amounts so paid to the State.

(11) Failure to maintain assistance to adult single custodial parent who cannot obtain child care for child under age 6.–

(A) In general.–If the Secretary determines that a State to which a grant is made under section 403 for a fiscal year has violated section 407(e)(2) during the fiscal year, the Secretary shall reduce the grant payable to the State under section 403 (a) (1) for the immediately succeeding fiscal year by an amount equal to not more than 5 percent of the State family assistance grant.

(B) Penalty based on severity of failure.–The Secretary shall impose reductions under subparagraph (A) with respect to a fiscal year based on the degree of noncompliance.

(12) Failure to expend additional state funds to replace grant reductions.–If the grant payable to a State under section 403 (a) (1) for a fiscal year is reduced by reason of this subsection, the State shall, during the immediately succeeding fiscal year, expend under the State program funded under this part an amount equal to the total amount of such reductions.

(b) Reasonable Cause Exception.–

(1) In general.–The Secretary may not impose a penalty on a State under subsection (a) with respect to a requirement if the Secretary determines that the State has reasonable cause for failing to comply with the requirement.

(2) Exception.–Paragraph (1) of this subsection shall not apply to any penalty under paragraph (7) or (8) of subsection (a).

(c) Corrective Compliance Plan.–

(1) In general.–

(A) Notification of violation.–Before imposing a penalty against a State under subsection (a) with respect to a violation of this part, the Secretary shall notify the State of the violation and allow the State the opportunity to enter into a corrective compliance plan in accordance with this subsection which outlines how the State will correct the violation and how the State will insure continuing compliance with this part.

(B) 60-day period to propose a corrective compliance plan.–During the 60-day period that begins on the date the State receives a notice provided under subparagraph (A) with respect to a violation, the State may submit to the Federal Government a corrective compliance plan to correct the violation.

(C) Consultation about modifications.–During the 60-day period that begins with the date the Secretary receives a corrective compliance plan

submitted by a State in accordance with subparagraph (B), the Secretary may consult with the State on modifications to the plan.

(D) Acceptance of plan.–A corrective compliance plan submitted by a State in accordance with subparagraph (B) is deemed to be accepted by the Secretary if the Secretary does not accept or reject the plan during 60-day period that begins on the date the plan is submitted.

(2) Effect of correcting violation.–The Secretary may not impose any penalty under subsection (a) with respect to any violation covered by a State corrective compliance plan accepted by the Secretary if the State corrects the violation pursuant to the plan.

(3) Effect of failing to correct violation.–The Secretary shall assess some or all of a penalty imposed on a State under subsection (a) with respect to a violation if the State does not, in a timely manner, correct the violation pursuant to a State corrective compliance plan accepted by the Secretary.

(4) Inapplicability to failure to timely repay a federal loan fund for a state welfare program.–This subsection shall not apply to the imposition of a penalty against a State under subsection (a) (6).

(d) Limitation on Amount of Penalties.–

(1) In general.–In imposing the penalties described in subsection (a), the Secretary shall not

reduce any quarterly payment to a State by more than 25 percent.

(2) Carryforward of unrecovered penalties.– To the extent that paragraph (1) of this subsection prevents the Secretary from recovering during a fiscal year the full amount of penalties imposed on a State under subsection (a) of this section for a prior fiscal year, the Secretary shall apply any remaining amount of such penalties to the grant payable to the State under section 403 (a) (1) for the immediately succeeding fiscal year.

SEC. 410. APPEAL OF ADVERSE DECISION.

(a) In General.–Within 5 days after the date the Secretary takes any adverse action under this part with respect to a State, the Secretary shall notify the chief executive officer of the State of the adverse action, including any action with respect to the State plan submitted under section 402 or the imposition of a penalty under section 409.

(b) Administrative Review.–

(1) In general.–Within 60 days after the date a State receives notice under subsection (a) of an adverse action, the State may appeal the action, in whole or in part, to the Departmental Appeals Board established in the Department of Health and Human Services (in this section referred to as the 'Board') by filing an appeal with the Board.

(2) Procedural rules.–The Board shall consider an appeal filed by a State under paragraph (1) on the basis of such documentation as the State may submit and as the Board may require to support the

final decision of the Board. In deciding whether to uphold an adverse action or any portion of such action, the Board shall conduct a thorough review of the issues and take into account all relevant evidence. The Board shall make a final determination with respect to an appeal filed under paragraph (1) not less than 60 days after the date the appeal is filed.

(c) Judicial Review of Adverse Decision.–

(1) In general.–Within 90 days after the date of a final decision by the Board under this section with respect to an adverse action taken against a State, the State may obtain judicial review of the final decision (and the findings incorporated into the final decision) by filing an action in–

(A) the district court of the United States for the judicial district in which the principal or headquarters office of the State agency is located; or

(B) the United States District Court for the District of Columbia.

(2) Procedural rules.–The district court in which an action is filed under paragraph (1) shall review the final decision of the Board on the record established in the administrative proceeding, in accordance with the standards of review prescribed by subparagraphs (A) through (E) of section 706(2) of title 5, United States Code. The review shall be on the basis of the documents and supporting data submitted to the Board.

SEC. 411. DATA COLLECTION AND REPORTING.

(a) Quarterly Reports by States.–

(1) General reporting requirement.–

(A) Contents of report.–Each eligible State shall collect on a monthly basis, and report to the Secretary on a quarterly basis, the following disaggregated case record information on the families receiving assistance under the State program funded under this part:

(i) The county of residence of the family.

(ii) Whether a child receiving such assistance or an adult in the family is disabled.

(iii) The ages of the members of such families.

(iv) The number of individuals in the family, and the relation of each family member to the youngest child in the family.

(v) The employment status and earnings of the employed adult in the family.

(vi) The marital status of the adults in the family, including whether such adults have never married, are widowed, or are divorced.

(vii)The race and educational status of each adult in the family.

(viii) The race and educational status of each child in the family.

(ix) Whether the family received subsidized housing, medical assistance under the State plan approved under title XIX, food stamps, or subsidized child care, and if the latter 2, the amount received.

(x) The number of months that the family has received each type of assistance under the program.

(xi) If the adults participated in, and the number of hours per week of participation in, the following activities:

(I) Education.

(II) Subsidized private sector employment.

(III) Unsubsidized employment.

(IV) Public sector employment, work experience, or community service.

(V) Job search.

(VI) Job skills training or on-the-job training.

(VII) Vocational education.

(xii) Information necessary to calculate participation rates under section 407.

(xiii) The type and amount of assistance received under the program, including the amount of and reason for any reduction of assistance (including sanctions).

(xiv) Any amount of unearned income received by any member of the family.

(xv) The citizenship of the members of the family.

(xvi) From a sample of closed cases, whether the family left the program, and if so, whether the family left due to–

(I) employment;

(II) marriage;

(III) the prohibition set forth in section 408(a) (7);

(IV) sanction; or

(V) State policy.

(B) Use of estimates.–

(i) Authority.–A State may comply with subparagraph (A) by submitting an estimate which is obtained through the use of scientifically acceptable sampling methods approved by the Secretary.

(ii) Sampling and other methods.–The Secretary shall provide the States with such case sampling plans and data collection procedures as the Secretary deems necessary to produce statistically valid estimates of the performance of State programs funded under this part. The Secretary may develop and implement procedures for verifying the quality of data submitted by the States.

(2) Report on use of federal funds to cover administrative costs and overhead.–The report required by paragraph (1) for a fiscal quarter shall include a statement of the percentage of the funds paid to the State under this part for the quarter that are used to cover administrative costs or overhead.

(3) Report on state expenditures on programs for needy families.–The report required by paragraph (1) for a fiscal quarter shall include a statement of the total amount expended by the State during the quarter on programs for needy families.

(4) Report on noncustodial parents participating in work activities.–The report required by paragraph (1) for a fiscal quarter shall include the number of noncustodial parents in the State who participated in work activities (as defined in section 407(d)) during the quarter.

(5) Report on transitional services.–The report required by paragraph (1) for a fiscal quarter shall include the total amount expended by the State during the quarter to provide transitional services to a family that has ceased to receive assistance under this part because of employment, along with a description of such services.

(6) Regulations.–The Secretary shall prescribe such regulations as may be necessary to define the data elements with respect to which reports are required by this subsection.

(b) Annual Reports to the Congress by the Secretary.–Not later than 6 months after the end of fiscal year 1997, and each fiscal year thereafter, the Secretary shall transmit to the Congress a report describing–

(1) whether the States are meeting--

(A) the participation rates described in section 407(a); and

(B) the objectives of–

(i) increasing employment and earnings of needy families, and child support collections; and

(ii) decreasing out-of-wedlock pregnancies and child poverty;

(2) the demographic and financial characteristics of families applying for assistance, families receiving assistance, and families that become ineligible to receive assistance;

(3) the characteristics of each State program funded under this part; and

(4) the trends in employment and earnings of needy families with minor children living at home.

SEC. 412. DIRECT FUNDING AND ADMINISTRATION BY INDIAN TRIBES.

(a) Grants for Indian Tribes.–

(1) Tribal family assistance grant.–

(A) In general.–For each of fiscal years 1997, 1998, 1999, 2000, 2001, and 2002, the Secretary shall pay to each Indian tribe that has an approved tribal family assistance plan a tribal family assistance grant for the fiscal year in an amount equal to the amount determined under subparagraph (B), and shall reduce the grant payable under section 403(a) (1) to any

State in which lies the service area or areas of the Indian tribe by that portion of the amount so determined that is attributable to expenditures by the State.

(B) Amount determined.–

(i) In general.–The amount determined under this subparagraph is an amount equal to the total amount of the Federal payments to a State or States under section 403 (as in effect during such fiscal year) for fiscal year 1994 attributable to expenditures (other than child care expenditures) by the State or States under parts A and F (as so in effect) for fiscal year 1994 for Indian families residing in the service area or areas identified by the Indian tribe pursuant to subsection (b) (1) (C) of this section.

(ii) Use of state submitted data.–

(I) In general.–The Secretary shall use State submitted data to make each determination under clause (i).

(II) Disagreement with determination.–If an Indian tribe or tribal organization disagrees with State submitted data described under subclause (I), the Indian tribe or tribal organization may submit to the Secretary such additional information as may be relevant to making the determination under clause (i) and the Secretary may consider such

information before making such determination.

(2) Grants for Indian tribes that received jobs funds.–

(A) In general.–The Secretary shall pay to each eligible Indian tribe for each of fiscal years 1997, 1998, 1999, 2000, 2001, and 2002 a grant in an amount equal to the amount received by the Indian tribe in fiscal year 1994 under section 482(i) (as in effect during fiscal year 1994).

(B) Eligible indian tribe.–For purposes of subparagraph (A), the term 'eligible Indian tribe' means an Indian tribe or Alaska Native organization that conducted a job opportunities and basic skills training program in fiscal year 1995 under section 482(i) (as in effect during fiscal year 1995).

(C) Use of grant.–Each Indian tribe to which a grant is made under this paragraph shall use the grant for the purpose of operating a program to make work activities available to members of the Indian tribe.

(D) Appropriation.–Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated $7,638,474 for each fiscal year specified in subparagraph (A) for grants under subparagraph (A).

(b) 3-Year Tribal Family Assistance Plan.–

(1) In general.–Any Indian tribe that desires to receive a tribal family assistance grant shall submit

to the Secretary a 3-year tribal family assistance plan that–

(A) outlines the Indian tribe's approach to providing welfare-related services for the 3-year period, consistent with this section;

(B) specifies whether the welfare-related services provided under the plan will be provided by the Indian tribe or through agreements, contracts, or compacts with intertribal consortia, States, or other entities;

(C) identifies the population and service area or areas to be served by such plan;

(D) provides that a family receiving assistance under the plan may not receive duplicative assistance from other State or tribal programs funded under this part;

(E) identifies the employment opportunities in or near the service area or areas of the Indian tribe and the manner in which the Indian tribe will cooperate and participate in enhancing such opportunities for recipients of assistance under the plan consistent with any applicable State standards; and

(F) applies the fiscal accountability provisions of section 5(f) (1) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 4SOc(f) (1)), relating to the submission of a single-agency audit report required by chapter 75 of title 31, United States Code.

(2) Approval.–The Secretary shall approve each tribal family assistance plan submitted in accordance with paragraph(1).

(3) Consortium of tribes.–Nothing in this section shall preclude the development and submission of a single tribal family assistance plan by the participating Indian tribes of an intertribal consortium.

(c) Minimum Work Participation Requirements and Time Limits.–The Secretary, with the participation of Indian tribes, shall establish for each Indian tribe receiving a grant under this section minimum work participation requirements, appropriate time limits for receipt of welfare-related services under the grant, and penalties against individuals–

(1) consistent with the purposes of this section;

(2) consistent with the economic conditions and resources available to each tribe; and

(3) similar to comparable provisions in section 407(e).

(d) Emergency Assistance.–Nothing in this section shall preclude an Indian tribe from seeking emergency assistance from any Federal loan program or emergency fund.

(e) Accountability.–Nothing in this section shall be construed to limit the ability of the Secretary to maintain program funding accountability consistent with–

(1) generally accepted accounting principles; and

(2) the requirements of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

(f) Penalties.–

(1) Subsections (a)(l), (a)(6), and (b) of section 409, shall apply to an Indian tribe with an approved tribal assistance plan in the same manner as such subsections apply to a State.

(2) Section 409(a) (3) shall apply to an Indian tribe with an approved tribal assistance plan by substituting 'meet minimum work participation requirements established under section 412(c)' for 'comply with section 407(a)'.

(g) Data Collection and Reporting.–Section 411 shall apply to an Indian tribe with an approved tribal family assistance plan.

(h) Special Rule for Indian Tribes in Alaska.–

(1) In general.–Notwithstanding any other provision of this section, and except as provided in paragraph (2), an Indian tribe in the State of Alaska that receives a tribal family assistance grant under this section shall use the grant to operate a program in accordance with requirements comparable to the requirements applicable to the program of the State of Alaska funded under this part. Comparability of programs shall be established on the basis of program criteria developed by the Secretary in consultation with the State of Alaska and such Indian tribes.

(2) Waiver.–An Indian tribe described in paragraph (1) may apply to the appropriate State authority to

receive a waiver of the requirement of paragraph (1).

SEC. 413. RESEARCH, EVALUATIONS, AND NATIONAL STUDIES.

(a) Research.–The Secretary shall conduct research on the benefits, effects, and costs of operating different State programs funded under this part, including time limits relating to eligibility for assistance. The research shall include studies on the effects of different programs and the operation of such programs on welfare dependency, illegitimacy, teen pregnancy, employment rates, child well-being, and any other area the Secretary deems appropriate. The Secretary shall also conduct research on the costs and benefits of State activities under section 409.

(b) Development and Evaluation of Innovative Approaches To Reducing Welfare Dependency and Increasing Child Well-Being.–

(1) In general.–The Secretary may assist States in developing, and shall evaluate, innovative approaches for reducing welfare dependency and increasing the well-being of minor children living at home with respect to recipients of assistance under programs funded under this part. The Secretary may provide funds for training and technical assistance to carry out the approaches developed pursuant to this paragraph.

(2) Evaluations.–In performing the evaluations under paragraph (1), the Secretary shall, to the maximum extent feasible, use random assignment as an evaluation methodology.

(c) Dissemination of Information.–The Secretary shall develop innovative methods of disseminating information on any research, evaluations, and studies conducted under this section, including the facilitation of the sharing of information and best practices among States and localities through the use of computers and other technologies.

(d) Annual Ranking of States and Review of Most and Least Successful Work Programs.–

(1) Annual ranking of states.–The Secretary shall rank annually the States to which grants are paid under section 403 in the order of their success in placing recipients of assistance under the State program funded under this part into long-term private sector jobs, reducing the overall welfare caseload, and, when a practicable method for calculating this information becomes available, diverting individuals from formally applying to the State program and receiving assistance. In ranking States under this subsection, the Secretary shall take into account the average number of minor children living at home in families in the State that have incomes below the poverty line and the amount of funding provided each State for such families.

(2) Annual review of most and least successful work programs.–The Secretary shall review the programs of the 3 States most recently ranked highest under paragraph (1) and the 3 States most recently ranked lowest under paragraph (1) that provide parents with work experience, assistance in finding employment, and other work preparation activities and support services to enable the families

of such parents to leave the program and become self-sufficient.

(e) Annual Ranking of States and Review of Issues Relating to Out-of-Wedlock Births. –

(1) Annual ranking of states.–

(A) In general.–The Secretary shall annually rank States to which grants are made under section 403 based on the following ranking factors:

(i) Absolute out-of-wedlock ratios.–The ratio represented by–

(I) the total number of out-of-wedlock births in families receiving assistance under the State program under this part in the State for the most recent fiscal year for which information is available; over

(II) the total number of births in families receiving assistance under the State program under this part in the State for such year.

(ii) Net changes in the out-of-wedlock ratio.–The difference between the ratio described in subparagraph (A) (i) with respect to a State for the most recent fiscal year for which such information is available and the ratio with respect to the State for the immediately preceding year.

(2) Annual review. –The Secretary shall review the programs of the 5 States most recently ranked

highest under paragraph (1) and the 5 States most recently ranked the lowest under paragraph (1).

(f) State-Initiated Evaluations.–A State shall be eligible to receive funding to evaluate the State program funded under this part if–

(1) the State submits a proposal to the Secretary for the evaluation;

(2) the Secretary determines that the design and approach of the evaluation is rigorous and is likely to yield information that is credible and will be useful to other States; and

(3) unless otherwise waived by the Secretary, the State contributes to the cost of the evaluation, from non-Federal sources, an amount equal to at least 10 percent of the cost of the evaluation.

(g) Report on Circumstances of Certain Children and Families.–

(1) In general.–Beginning 3 years after the date of the enactment of this Act, the Secretary of Health and Human Services shall prepare and submit to the Committees on Ways and Means and on Economic and Educational Opportunities of the House of Representatives and to the Committees on Finance and on Labor and Resources of the Senate annual reports that examine in detail the matters described in paragraph (2) with respect to each of the following groups for the period after such enactment:

(A) Individuals who were children in families that have become ineligible for assistance under a State program funded under this part by

reason of having reached a time limit on the provision of such assistance.

(B) Children born after such date of enactment to parents who, at the time of such birth, had not attained 20 years of age.

(C) Individuals who, after such date of enactment, became parents before attaining 20 years of age.

(2) Matters described.–The matters described in this paragraph are the following:

(A) The percentage of each group that has dropped out of secondary school (or the equivalent), and the percentage of each group at each level of educational attainment.

(B) The percentage of each group that is employed.

(C) The percentage of each group that has been convicted of a crime or has been adjudicated as a delinquent.

(D) The rate at which the members of each group are born, or have children, out-of-wedlock, and the percentage of each group that is married.

(E) The percentage of each group that continues to participate in State programs funded under this part.

(F) The percentage of each group that has health insurance provided by a private entity (broken down by whether the insurance is provided through an employer or otherwise),

the percentage that has health insurance provided by an agency of government, and the percentage that does not have health insurance.

(G) The average income of the families of the members of each group.

(H) Such other matters as the Secretary deems appropriate.

(h) Funding of Studies and Demonstrations.–

(1) In general.– Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated $15,000,000 for each of fiscal years 1997 through 2002 for the purpose of paying–

(A) the cost of conducting the research described in subsection (a);

(B) the cost of developing and evaluating innovative approaches for reducing welfare dependency and increasing the well-being of minor children under subsection (b);

(C) the Federal share of any State-initiated study approved under subsection (f); and

(D) an amount determined by the Secretary to be necessary to operate and evaluate demonstration projects, relating to this part, that are in effect or approved under section 1115 as of September 30, 1995, and are continued after such date.

(2) Allocation.–Of the amount appropriated under paragraph (1) for a fiscal year–

(A) 50 percent shall be allocated for the purposes described in subparagraphs (A) and (B) of paragraph (1), and

(B) 50 percent shall be allocated for the purposes described in subparagraphs (C) and (D) of paragraph (1).

(3) Demonstrations of innovative strategies.–The Secretary may implement and evaluate demonstrations of innovative and promising strategies which–

(A) provide one-time capital funds to establish, expand, or replicate programs;

(B) test performance-based grant-to-loan financing in which programs meeting performance targets receive grants while programs not meeting such targets repay funding on a prorated basis; and

(C) test strategies in multiple States and types of communities.

(i) Child Poverty Rates.–

(1) In general.–Not later than 90 days after the date of the enactment of this part, and annually thereafter, the chief executive officer of each State shall submit to the Secretary a statement of the child poverty rate in the State as of such date of enactment or the date of the most recent prior statement under this paragraph.

(2) Submission of corrective action plan.–Not later than 90 days after the date a State submits a statement under paragraph (1) which indicates that,

as a result of the amendments made by section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the child poverty rate of the State has increased by 5 percent or more since the most recent prior statement under paragraph (1), the State shall prepare and submit to the Secretary a corrective action plan in accordance with paragraph (3).

(3) Contents of plan.–A corrective action plan submitted under paragraph (2) shall outline the manner in which the State will reduce the child poverty rate in the State. The plan shall include a description of the actions to be taken by the State under such plan.

(4) Compliance with plan.–A State that submits a corrective action plan that the Secretary has found contains the information required by this subsection shall implement the corrective action plan until the State determines that the child poverty rate in the State is less than the lowest child poverty rate on the basis of which the State was required to submit the corrective action plan.

(5) Methodology.–The Secretary shall prescribe regulations establishing the methodology by which a State shall determine the child poverty rate in the State. The methodology shall take into account factors including the number of children who receive free or reduced-price lunches, the number of food stamp households, and the county-by-county estimates of children in poverty as determined by the Census Bureau.

SEC. 414. STUDY BY THE CENSUS BUREAU.

(a) In General.–The Bureau of the Census shall continue to collect data on the 1992 and 1993 panels of the Survey of Income and Program Participation as necessary to obtain such information as will enable interested persons to evaluate the impact of the amendments made by title I of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 on a random national sample of recipients of assistance under State programs funded under this part and (as appropriate) other low-income families, and in doing so, shall pay particular attention to the issues of out-of-wedlock birth, welfare dependency, the beginning and end of welfare spells, and the causes of repeat welfare spells, and shall obtain information about the status of children participating in such panels.

(b) Appropriation.–Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated $10,000,000 for each of fiscal years 1996, 1997, 1998, 1999, 2000, 2001, and 2002 for payment to the Bureau of the Census to carry out subsection (a).

SEC. 415. WAIVERS.

(a) Continuation of Waivers.–

(1) Waivers in effect on date of enactment of welfare reform.–

(A) In general.–Except as provided in subparagraph (B), if any waiver granted to a State under section 1115 of this Act or otherwise which relates to the provision of assistance under a State plan under this part (as

in effect on September 30, 1996) is in effect as of the date of the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the amendments made by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (other than by section 103(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996) shall not apply with respect to the State before the expiration (determined without regard to any extensions) of the waiver to the extent such amendments are inconsistent with the waiver.

(B) Financing limitation.–NotwithStanding any other provision of law, beginning with fiscal year 1996, a State operating under a waiver described in subparagraph (A) shall be entitled to payment under section 403 for the fiscal year, in lieu of any other payment provided for in the waiver.

(2) Waivers granted subsequently.–

(A) In general.–Except as provided in subparagraph (B), if any waiver granted to a State under section 1115 of this Act or otherwise which relates to the provision of assistance under a State plan under this part (as in effect on September 30, 1996) is submitted to the Secretary before the date of the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and approved by the Secretary on or before July 1, 1997, and the State demonstrates to the satisfaction of the Secretary that the waiver will

not result in Federal expenditures under title IV of this Act (as in effect without regard to the amendments made by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996) that are greater than would occur in the absence of the waiver, the amendments made by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (other than by section 103(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996) shall not apply with respect to the State before the expiration (determined without regard to any extensions) of the waiver to the extent the amendments made by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 are inconsistent with the waiver.

(B) No effect on new work requirements.– Notwithstanding subparagraph (A), a waiver granted under section 1115 or otherwise which relates to the provision of assistance under a State program funded under this part (as in effect on September 30, 1996) shall not affect the applicability of section 407 to the State.

(b) State Option To Terminate Waiver.–

(1) In general.–A State may terminate a waiver described n subsection (a) before the expiration of the waiver.

(2) Report.–A State which terminates a waiver under paragraph (1) shall submit a report to the Secretary summarizing the waiver and any available

information concerning the result or effect of the waiver.

(3) Hold harmless provision.–

(A) In general.–Notwithstanding any other provision of law, a State that, not later than the date described in subparagraph (B) of this paragraph, submits a written request to terminate a waiver described in subsection (a) shall be held harmless for accrued cost neutrality liabilities incurred under the waiver.

(B) Date described.–The date described in this subparagraph is 90 days following the adjournment of the first regular session of the State legislature that begins after the date of the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(c) Secretarial Encouragement of Current Waivers.–The Secretary shall encourage any State operating a waiver described in subsection (a) to continue the waiver and to evaluate, using random sampling and other characteristics of accepted scientific evaluations, the result or effect of the waiver.

(d) Continuation of Individual Waivers.–A State may elect to continue 1 or more individual waivers described in subsection (a).

SEC. 416. ADMINISTRATION.

The programs under this part and part D shall be administered by an Assistant Secretary for Family Support within the Department of Health and Human Services, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be in addition to

any other Assistant Secretary of Health and Human Services provided for by law, and the Secretary shall reduce the Federal workforce within the Department of Health and Human Services by an amount equal to the sum of 75 percent of the full-time equivalent positions at such Department that relate to any direct spending program, or any program funded through discretionary spending, that has been converted into a block grant program under th Personal Responsibility and Work Opportunity Act of 1996 and the amendments made by such Act, and by an amount equal to 75 percent of that portion of the total full-time equivalent departmental management positions at such Department that bears the same relationship to the amount appropriated for any direct spending program, or any program funded through discretionary spending, that has been converted into a block grant program under the Personal Responsibility and Work Opportunity Act of 1996 and the amendments made by such Act, as such amount relates to the total amount appropriated for use by such Department, and, notwithstanding any other provision of law, the Secretary shall take such actions as may be necessary, including reductions in force actions, consistent with sections 3502 and 3595 of title 5, United States Code, to reduce the full-time equivalent positions within the Department of Health and Human Services by 245 full-time equivalent positions related to the program converted into a block grant under the amendment made by section 2103 of the Personal Responsibility and Work Opportunity Act of 1996, and by 60 full-time equivalent managerial positions in the Department.

SEC. 417. LIMITATION ON FEDERAL AUTHORITY.

No officer or employee of the Federal Government may regulate the conduct of States under this part or enforce any

provision of this part, except to the extent expressly provided in this part; and

(2) by inserting after such section 418 the following:

SEC. 419. DEFINITIONS.

As used in this part:

(1) Adult.–The term 'adult' means an individual who is not a minor child.

(2) Minor child.–The term 'minor child' means an individual who–

(A) has not attained 18 years of age; or

(B) has not attained 19 years of age and is a full-time student in a secondary school (or in the equivalent level of vocational or technical training).

(3) Fiscal year.–The term 'fiscal year' means any 12-month period ending on September 30 of a calendar year.

(4) Indian, Indian tribe, and tribal organization.–

(A) In general.–Except as provided in subparagraph (B), the terms 'Indian', 'Indian tribe', and 'tribal organization' have the meaning given such terms by section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(B) Special rule for Indian tribes in Alaska.–The term 'Indian tribe' means, with respect to the State of Alaska, only the

Metlakatla Indian Community of the Annette Islands Reserve and the following Alaska Native regional nonprofit corporations:

(i) Arctic Slope Native Association.

(ii) Kawerak, Inc.

(iii) Maniilaq Association.

(iv) Association of Village Council Presidents.

(v) Tanana Chiefs Conference.

(vi) Cook Inlet Tribal Council.

(vii) Bristol Bay Native Association.

(viii) Aleutian and Pribilof Island Association.

(ix) Chugachmuit.

(x) Tlingit Haida Central Council.

(xi) Kodiak Area Native Association.

(xii) Copper River Native Association.

(5) State.–Except as otherwise specifically provided, the term 'State' means the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa.

(b) Grants to Outlying Areas.–Section 1108 (42 U.S.C. 1308) is amended–

(1) by striking subsections (d) and (e);

(2) by redesignating subsection (c) as subsection (f); and

(3) by striking all that precedes subsection (c) and inserting the following:

SEC. 1108. ADDITIONAL GRANTS TO PUERTO RICO, THE VIRGIN ISLANDS, GUAM, AND AMERICAN SAMOA; LIMITATION ON TOTAL PAYMENTS.

(a) Limitation on Total Payments to Each Territory.– Notwithstanding any other provision of this Act, the total amount certified by the Secretary of Health and Human Services under titles I, X, XIV, and XVI, under parts A and E of title IV, and under subsection (b) of this section, for payment to any territory for a fiscal year shall not exceed the ceiling amount for the territory for the fiscal year

(b) Entitlement to Matching Grant.–

(1) In general.–Each territory shall be entitled to receive from the Secretary for each fiscal year a grant in an amount equal to 75 percent of the amount (if any) by which–

(A) the total expenditures of the territory during the fiscal year under the territory programs funded under parts A and E of title IV; exceeds

(B) the sum of–

(i) the amount of the family assistance grant payable to the territory without regard to section 409; and

(ii) the total amount expended by the territory during fiscal year 1995 pursuant

to parts A and F of title IV (as so in effect), other than for child care.

(2) Appropriation.–Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for fiscal years 1997 through 2002, such sums are necessary for grants under this paragraph.

(c) Definitions.–As used in this section:

(1) Territory.–The term 'territory' means Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(2) Ceiling amount.–The term 'ceiling amount' means, with respect to a territory and a fiscal year, the mandatory ceiling amount with respect to the territory, reduced for the fiscal year in accordance with subsection (e), and reduced by the amount of any penalty imposed on the territory under any provision of law specified in subsection (a) during the fiscal year.

(3) Family assistance grant.–The term 'family assistance grant' has the meaning given such term by section 403(a) (1) (B).

(4) Mandatory ceiling amount.–The term 'mandatory ceiling amount' means–

(A) $107,255,000 with respect to Puerto Rico;

(B) $4,686,000 with respect to Guam;

(C) $3,554,000 with respect to the Virgin Islands; and

(D) $1,000,000 with respect to American Samoa.

APPENDIX D

26-2-701 Human Services Code
PART 7
COLORADO WORKS PROGRAM

26-2-701. Short title. This part 7 shall be known and may be cited as the "Colorado Works Program Act".

Source: L. 97: Entire part added, p. 1194, § 1, effective June 3.

Law reviews. For article, "The State's Approach to Welfare Reform: 'Colorado Works'", see 27 Colo. Law. 37 (January 1998).

26-2-702. Legislative intent. (1) The general assembly hereby finds and declares that:

(a) Passage of the federal "Personal Responsibility and Work Opportunity Reconciliation Act of 1996", Public Law 104-193, gives the state a unique opportunity to develop a public assistance program that emphasizes placing recipients in work and supporting them in sustained employment with food stamps, child care assistance, and medicaid;

(b) The federal "Personal Responsibility and Work Opportunity Reconciliation Act of 1996", Public Law 104-193, requires increased local input in developing the state plan for public assistance under that law and allows increased local control over the implementation of such state plan;

(c) The federal "Personal Responsibility and Work Opportunity Reconciliation Act of 1996", Public Law 104-193, requires additional training for local employees in the area of case management to assist in making recipients self-sufficient.

(2) Therefore, the general assembly finds and declares that it is in the state's best interests to adopt the Colorado works program set forth in this part 7.

Source: L. 97: Entire part added, p. 1194, § 1, effective June 3.

26-2-703. Definitions. As used in this part 7, unless the context otherwise requires:

(1) "Aid to families with dependent children" or "AFCD" means the state program of aid to families with dependent children approved under part A of Title IV of the social security act, as the program and the part were in effect on July 16, 1996.

(2) "Assistance" means any cash grant, benefit, service, or other form of temporary assistance offered by a county department to a participant that is funded by the county block grant pursuant to the provisions of this part 7 and any rules promulgated pursuant to this part 7.

(2.5) "Assistance unit" means those family members who are participants in the Colorado works program and who are receiving cash assistance.

(3) "Basic assistance grant" means cash assistance provided to a participant in the Colorado works program pursuant to section 26-2-709.

(3.5) (a) "Cash assistance" means cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs such as food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses. "Cash assistance" includes such benefits even when they are:

(I) Provided in the form of payments by a TANF agency, or other agency on its behalf, to individual participants; and

(II) Conditioned on participation in a work activity or community service.

(b) Except as otherwise excluded in paragraph (c) of this subsection (3.5), "cash assistance" also includes supportive services provided to families who are not employed such as transportation and child care.

(c) "Cash assistance" does not include:

(I) Nonrecurrent, short-term benefits that:

(A) Are designed to address a specific crisis situation or episode of need;

(B) Are not intended to meet recurrent or ongoing needs; and

(C) Will not extend beyond four months;

(II) Work subsidies such as payments to employers or third parties to help cover the costs of employee wages, benefits, supervision, and training;

(III) Supportive services such as child care and transportation provided to families who are employed;

(IV) Refundable earned income tax credits;

(V) Contributions to, and distributions from, individual development accounts;

(VI) Services such as counseling, case management, peer support, child care information and referral, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support; and

(VII) Transportation benefits provided under a job access or reverse commute project to an individual who is not otherwise receiving assistance.

(4) "Colorado child care assistance program" means the state program of childcare assistance implemented pursuant to the provisions of part 8 of this article and rules of the state department.

(5) "Colorado works program" or "works program" means the program of public assistance created in this part 7.

(5.5) "Controlled substance" means a substance, a drug, or an immediate precursor included in schedules I to V of part 2 of article 18 of title 18, C.R.S., and any "alcohol beverage" as defined in section 12-47-103 (2), C.R.S.

(6) "County" means a county or a city and county.

(7) "County block grant" means a block grant provided to a county pursuant to the provisions of section 26-2-712.

(8) "County department" means:

(a) The department of social services of a county or a city and county; or

(b) Any combination of departments of social services of a county or a city and county that are approved by the state department to implement a county block grant jointly pursuant to the provisions of section 26-2-718.

(9) "Dependent child" means a person who resides with a parent or a specified caretaker relative and who is under the age of eighteen years or, if the person is a full-time student at a secondary school or vocational or technical equivalent and is reasonably expected to complete the school or vocational or technical equivalent before attaining the age of nineteen years, is under nineteen years.

(9.5) "Disqualified or excluded person" means a person who would otherwise be a member of an assistance unit but who is rendered ineligible to participate due to program prohibitions.

(10) "Diversion grant" means a grant of assistance authorized pursuant to section 26-2-707.

(11) "Indian tribe" means a federally recognized Indian tribe with part or all of its reservation located in the state of Colorado;

(12) "Individual responsibility contract" or "IRC" means the contract entered into by the participant and the county department pursuant to section 26-2-708.

(13) "JOBS" means the job opportunity and basic skills program approved under part A of Title IV of the social security act, as the program and the part were in effect on July 16, 1996.

(13.5) "Noncustodial parent", as defined in 45 CFR 260.30, means a person who:

(a) Is the parent of a minor child receiving assistance under the Colorado works program; and

(b) Lives in Colorado; and

(c) Does not live in the same household as the minor child receiving assistance under the Colorado works program.

(14) "Parent" means either a biological parent or a parent by adoption.

(15) "Participant" means an individual who receives any assistance or who participates in a specific component of the Colorado works program.

(16) "Performance contract" means the performance-based contract executed by the state department and the board of county commissioners of each county or the boards of county commissioners of a group of counties pursuant to section 26-2-715.

(17) "Personal responsibility and work opportunity reconciliation act" or "federal law" means the federal "Personal Responsibility and Work Opportunity Reconciliation Act of 1996", Public Law 104-193.

(17.5) "Program prohibitions" means any one or more of the following circumstances that, pursuant to this part 7 or federal law, renders an individual unable to participate in the Colorado works program:

(a) That the applicant or participant has misrepresented his or her residence to obtain TANF benefits in two or more states at the same time, pursuant to section 26-2-711 (7);

(b) That the applicant or participant is a fleeing felon;

(c) That the applicant or participant has been convicted of a drug-related felony under the laws of this state, any other state, or the federal government on or after June 3, 1997, except as otherwise provided in section 26-2-706 (3);

(d) That the applicant or participant is an alien who does not meet the definition of a qualified alien pursuant to section 26-2-103 (7.5);

(e) That the applicant or participant has been convicted of welfare fraud under the laws of this state, any other state, or the federal government; or

(f) That the applicant or participant lacks, and has failed to apply for, a social security number.

(18) "Reservation" means the Ute Mountain Ute Indian Reservation and the Southern Ute Indian Reservation in Colorado.

(18.5) "Targeted spending level" means the amount of county funds that a county shall appropriate pursuant to the provisions of section 26-1-122 for the purpose of defraying

the county's maintenance of effort requirement for the works program.

(19) "Temporary assistance for needy families" or "TANF" means the program of block grants from the federal government to the states to implement assistance programs pursuant to the provisions of the personal responsibility and work opportunity reconciliation act.

(20) "Tribal member" means an enrolled member of either the Ute Mountain Ute or Southern Ute Indian tribes.

(21) (a) Except as provided in paragraph (b) of this subsection (21) and subject to the restrictions in the federal law, "work activities" means:

(I) Unsubsidized employment;

(II) Subsidized private sector employment;

(III) Subsidized public sector employment;

(IV) Work experience (including work associated with the refurbishing of publicly assisted housing) if sufficient private sector employment is not available;

(V) On-the-job training;

(VI) Job search and job readiness assistance;

(VII) Community service programs;

(VIII) Vocational educational training (not to exceed twelve months with respect to any participant);

(IX) Job skill training directly related to employment;

(X) Education directly related to employment, in the case of a participant who has not received a high school diploma or a certificate of high school equivalency;

(XI) Satisfactory attendance at secondary school or in a course of study leading to a certificate of general

equivalence, in the case of a participant who has not completed secondary school or received such a certificate; and

(XII) The provision of child care services to a participant in a community service program.

(b) "Work activities" also means maintenance of satisfactory attendance at secondary school or the equivalent or participation in education directly related to employment for at least the minimum average number of hours per week specified by the state department for a participant who is the head of a household and has not attained twenty years of age.

(c) Participants shall be considered to be engaged in work if they are participating in work activities as described in the federal law or if they are participating in other work activities designed to lead to self-sufficiency as determined by the county and as outlined in their IRC.

(22) "Work participation rate" means the percentage of participants who are involved in work activities as required statewide under the personal responsibility and work opportunity reconciliation act.

(23) "Works allocation committee" means the committee created pursuant to section 26-2-714 (6).

Source: L.97: Entire part added, p. 1195, § 1, effective June 3. **L. 98**: (18.5) and (23) added, p. 1192, § 1, effective June 1. **L. 99**: (5.5) added, p. 1361, § 5, effective June 3; (2.5), (9.5), and (17.5) added, p. 48, § 1, effective July 1; (3.5) added, p. 31, § 1, effective July 1. **L. 2000**: (3.5) amended p. 24, § 1, effective March 10. **L. 2001**: (13.5) added, p. 723, § 6, effective May 31.

26-2-704. No individual entitlement. (1) Nothing in this part 7 or in any rules promulgated pursuant to this part 7 shall be interpreted to create a legal entitlement in any

participant to assistance provided pursuant to the works program.

(2) No county administering or implementing the works program with moneys from a county block grant as provided in section 26-2-714 may create or shall be deemed to create a legal entitlement in any participant to assistance provided pursuant to the works program.

Source: L. 97: Entire part added, p. 1198, § 1, effective June 3.

26-2-705. Works program - purposes. (1) Effective July 1, 1997, the. Colorado works program is implemented pursuant to the personal responsibility and work opportunity reconciliation act and is intended to comply with the express requirements for participation in the TANF block grant program.

(2) The purposes of the works program are to:

(a) Assist participants to terminate their dependence on government benefits by promoting job preparation, work, and marriage;

(b) Develop strategies and policies that focus on ensuring that participants are in work activities as soon as possible so that the state is able to meet or exceed work participation rates specified in the federal law;

(c) Allow the counties increased responsibility for the administration of the works program.

(3) Nothing in this part 7 is intended to prevent a county or municipality from implementing a public assistance or general assistance program with local funds.

Source: L. 97: Entire part added, p. 1198, § 1, effective June 3.

26-2-706. Target populations. (1) (a) Subject to the provisions of this section and restrictions in the federal law, any person or family eligible to receive AFDC in Colorado based upon eligibility criteria in effect on July 16, 1996, may receive assistance under the Colorado works program.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (1), the state board shall promulgate rules to provide that two-parent families shall be treated the same as single-parent families under the provisions of this section.

(c) Notwithstanding the provisions of paragraph (a) of this subsection (1), the state board shall promulgate rules to provide that half siblings residing in the same household not be required to be in the same assistance unit if at least one of the half siblings is receiving child support. In such circumstance, the half sibling receiving child support shall be given the option to not participate in Colorado works.

(d) The state board shall promulgate rules to provide that a noncustodial parent may be allowed to receive services under the Colorado works program, but not a basic assistance grant, at a county's option and in accordance with the county's plan. Such services provided to a noncustodial parent pursuant to this paragraph (d) shall be intended to promote the sustainable employment of the noncustodial parent and enable such parent to pay child support. Provision of such services shall not negatively impact the eligibility for benefits or services of the custodial parent.

(2) The state board shall promulgate rules to identify with specificity who may be a participant in the works program. The rules shall:

(a) Allow an applicant or a participant to own a motor vehicle and a homestead property;

(b) Exempt a maximum resource level for an applicant that shall be not less than one thousand dollars per family

nor greater than two thousand dollars per family or the resource level for the food stamp program, whichever is greater;

(c) Provide that a parent who has not yet attained the age of eighteen years, who is not married, and who does not reside with his or her parent or another adult relative in an adult-supervised home, or in any other arrangement approved by the county department, shall not receive services or benefits provided through federal funds under the works program.

(3) A person convicted of a drug-related felony offense under the laws of this state, any other state, or the federal government on or after June 3, 1997, shall not be eligible for assistance under the works program, unless such person is determined by the county department to have taken action toward rehabilitation such as, but not limited to, participation in a drug treatment program.

(4) The state board shall promulgate rules to simplify the requirements that were in effect for the AFDC program on July 16, 1996, relating to determination and verification of eligibility criteria. Nothing in this subsection (4) shall authorize the state board to amend or delete eligibility criteria for participation in the works program that the board is not otherwise authorized to amend or delete.

(5) (a) The state department shall analyze the extent to which the birth of additional children to a participant under this part 7 may affect the participant's ability to attain self-sufficiency.

(b) Repealed.

Source: L. 97: Entire part added, p. 1198, § 1, effective June 3. **L. 2001**: (1) amended, p.102, § 1, effective March 21; (1) amended, p. 723, § 7, effective May 31; (5)(b) repealed, p. 1170, § 3, effective August 8.

Editor's note: (1) Amendments to subsection (1) by House Bill 01-1048 and House Bill 01-1264 were (2) Subsection (5)(b) was contained in a 2001 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

26-2-706.5. Restrictions on length of participation. (1) As of June 3, 1997, each month of cash assistance received by an assistance unit that includes a caretaker relative who has received assistance under Title IV-A of the social security act, as amended, shall count toward that caretaker relative's sixty-month lifetime maximum of TANF benefits as established in the personal responsibility and work opportunity reconciliation act.

(2) Any month in which a caretaker relative is determined to be a disqualified or excluded person, as that term is defined in section 26-2-703 (9.5), from a basic assistance grant shall count as a month of participation in the calculation of such person's overall sixty-month lifetime maximum.

(3) (a) The county department shall, where available and applicable, provide for or refer a disqualified or excluded person to other appropriate services, including services that may assist the person toward self-sufficiency.

(b) Nothing in this subsection (3) shall be construed to create any entitlement for services or to require any county to expend resources in addition to existing appropriations.

Source: L. 99: Entire section added, p. 49, § 2, effective July 1.

26-2-707. Diversion grant. (1) An applicant or a participant may receive a diversion grant pursuant to the provisions of this section and rules promulgated by the state board if such applicant or participant:

(a) Meets the requirements of section 26-2-706;

(b) Does not need tong-term cash assistance or a basic assistance grant provided pursuant to section 26-2-709;

(c) Has a demonstrable need for a specific item or type of assistance. Such assistance may be in the form of a one-time lump sum cash amount for a specific need; and

(d) Enters into a written agreement that shall define the expectations for the recipient of the diversion grant and shall constitute the individual responsibility contract described in section 26-2-708 with the county department concerning the need for, and the specific type of, assistance being delivered in the diversion grant and in which the applicant or participant agrees not to apply for any further assistance under the works program in that county or any other county for a period of time to be established by the county department in the agreement.

(2) A county may establish a separate diversion program using county block grant moneys for applicants who are not eligible under section 26-2-706 but who meet the criteria set forth in paragraphs (b), (c), and (d) of subsection (1) of this section. A county shall establish any other eligibility criteria for such a diversion program based upon fair and objective criteria that shall include the maximum income allowed for participation in such a diversion program.

Source: L. 97: Entire part added, p. 1199, § 1, effective June 3.

26-2-707.5. Community resources investment assistance. (1) A county department may use county block grant moneys to invest in the development of community resources that support the purposes of the federal "Personal Responsibility and Work Opportunity Reconciliation Act", Public Law 104-193, and that are designed to assist eligible applicants or participants under section 26-2-706 or 26-2-707. An eligible

applicant or participant may receive benefits or services from such a community resource without completing an application pursuant to section 26-2-106, or a written agreement pursuant to section 26-2-707 (1) (d), or an individual responsibility contract pursuant to section 26-2-708 (2). However, nothing in this subsection (1) precludes a county department from requiring such applications, written agreements, and individual responsibility contracts in a county's individual contracting procedures established pursuant to subsection (2) of this section.

(2) The state board shall establish standards and procedures through rules for the use of county block grant moneys pursuant to this section including but not limited to the contracting procedures counties must follow to ensure that funds are being spent to support TANF-eligible applicants or participants. Such contracting procedures shall include a requirement that a county's contract with a provider shall specify the approximate number of applicants or participants to be served by the provider. Counties shall also be required to adopt official written policies as referenced in section 26-2-716 (2.5) regarding the types of community resources in which counties are investing, the purposes of such community resource investments, the income eligibility standards, and the county's dispute resolution processes.

(3) A county that uses county block grant moneys pursuant to this section shall use all moneys in accordance with all applicable federal and state statutes and regulations.

(4) A county shall not be authorized to use funds pursuant to this section for the purpose of supplanting funds.

(5) Nothing in this section shall preclude a household from applying for and receiving basic cash assistance.

Source: L. 2001: Entire section added, p. 660, § 1, effective May 30.

26-2-708. Benefits - assessment - individual responsibility contract - screening for domestic violence. (1) Subject to the provisions of the federal law, the provisions of this section, and available appropriations, a county department shall perform an assessment for a new participant on or after June 3, 1997, who is eighteen years of age or older, or who is sixteen years of age or older but has not yet attained the age of eighteen years of age and has not completed high school or obtained a certificate of high school equivalency and is not attending high school or participating in a high school equivalency program. The initial assessment shall be completed no more than thirty days after the submission of the application for assistance under the works program. Updated assessments may be conducted at the discretion of the county department.

(2) A county department shall develop an individual responsibility contract (IRC) for a new participant on or after June 3, 1997, who has been assessed pursuant to subsection (1) of this section, within thirty days after completing the initial assessment of the participant as required in subsection (1) of this section, subject to the provisions of the federal law and this section. The IRC shall be limited in scope to matters relating to securing and maintaining training, education, or work. The county department shall seek the input and involvement of the participant when developing the IRC.

(3) The IRC shall contain provisions in bold print at the beginning of the document that notify the participant of the following:

(a) That no individual is legally entitled to any form of assistance under the Colorado works program;

(b) That the IRC is a contract that contains terms and conditions governing the participant's receipt of assistance under the Colorado works program and that nothing in such contract may be deemed to create a legal entitlement to assistance under the Colorado works program;

(c) That the participant's failure to comply with the terms and conditions of the IRC may result in sanctions, including but not limited to the termination of any cash assistance;

(d) For a county that has elected to implement a Colorado works controlled substance abuse control program described in section 26-2-708.5, that the IRC may require the participant to participate in such Colorado works controlled substance abuse control program based upon the participant's use of a controlled substance by requiring the participant to take action toward rehabilitation consistent with the recommendations of the assessment pursuant to section 26-2-708.5. The program may be included as a county-defined work activity. The rehabilitation plan may include random drug testing, drug treatment, or other rehabilitation activities. The participant may be subject to any sanctions for nonparticipation in a work activity if the participant fails to meet the requirements of the rehabilitation plan; except that a participant may not be sanctioned for failing to meet the requirements of the rehabilitation plan if services required under such plan are not available, if transportation or child care is not available, or if the costs of the services are prohibitive; and

(e) That the applicant or participant shall indicate by signature on the IRC either agreement with the terms and conditions of the IRC or that the applicant or participant requests a county level review of the proposed IRC in accordance with section 26-2-710 (4) on the grounds that the proposed IRC is unreasonable within the context of the county's written policies.

(4) (Deleted by amendment, L. 99, p. 272, § 1, effective April 13,1999.)

(5) The state board shall establish through rules, after consultation with domestic violence service providers, statewide standards and procedures that:

(a) Require counties to provide notice to all past or present victims of domestic violence as described in the federal law or those at risk of further domestic violence of the referrals required pursuant to paragraph (b) of this subsection (5), the possible waivers pursuant to paragraph (c) of this subsection (5), and the applicable procedures described in paragraph (e) of this subsection (5);

(b) Require counties to provide for referrals to any available counseling and supportive services to past or present victims of domestic violence as described in the federal law or those at risk of further violence, but the rules shall not obligate a county to pay for any counseling or supportive services to which a participant is referred;

(c) Allow counties upon a showing of good cause, as determined by rules of the state board, to provide waivers from any program requirements, except as provided in paragraph (d) of this subsection (5), that will make it more difficult for an applicant or a participant to escape domestic violence or that would unfairly penalize such individuals who are or have been victimized by such violence or who are at risk of further violence;

(d) Require counties to submit requests for waivers of work requirements to the state department to determine whether good cause exists to grant such waivers;

(e) Require counties to assure the voluntariness and confidentiality of the procedures for identifying eligibility for referrals to supportive services and waivers, the procedures for applying for waivers, and the procedures by

which an applicant or a participant who is denied a waiver may appeal such decision.

(5.5) (a) In order to facilitate the proper identification, screening, and assessment of past and present victims of domestic violence applying for or participating in the Colorado works program and to assist counties in complying with the provisions of this subsection (5.5) and subsection (5) of this section, the state board of human services shall promulgate rules that require the state department to provide ongoing domestic violence training and appropriate domestic violence training materials to county staff and to:

(I) Assist counties in developing local resources and utilizing available community resources to provide counseling and supportive services to past and present victims of domestic violence; and

(II) Require counties to make applicants to and participants of the Colorado works program aware of the services and assistance provided by the state department pursuant to this subsection (5.5) and by the county.

(b) The state department shall have the authority to contract with any individual or entity that has demonstrated expertise in the area of domestic violence for the provision of the services specified in this subsection (5.5).

(c) Implementation of this subsection (5.5) shall be conditioned upon the availability of appropriations from the Colorado long-term works reserve fund created in section 26-2-721.

(6) The state board shall establish rules pursuant to which the counties shall provide referrals for any available supportive services to applicants and participants who are homeless or in need of mental health services or substance abuse counseling or services, but the rules shall not obligate

a county to pay for any supportive services to which any applicant or participant is referred.

Source: L. 97: Entire part added, p. 1200, § 1, effective June 3. **L. 99**: (1), (2), and (4) amended, p. 272, § 1, effective April 13; (3) amended, p. 658, § 1, effective May 18; (3); amended, p. 1359, § 1, effective June 3. **L. 2001**: (5)(d) amended, p. 1173, §12, effective August 8; (5.5) added, p. 980, § 5, effective August 8.

Editor's note: (1) Amendments made to subsection (3) by House Bill 99-1203 and House Bill 99-1017 were harmonized. As a result of the harmonization, subsection (2) Subsections (5)(d) and (5.5) were contained in 2001 acts that were passed without safety clauses. For further explanation concerning the effective dates, see page vii of this volume.

26-2-708.5. Colorado works controlled substance abuse control program. (1) A county may elect to implement a Colorado works controlled substance abuse control program pursuant to the provisions of this section. Under such a program, if the use of a controlled substance prevents the participant from successfully participating in his or her work activity, then a county department may require the participant to participate in a substance abuse control program based in whole or in part upon a representation by the participant that the participant is using controlled substances or upon a finding by the county department pursuant to an assessment by a certified drug treatment provider that the participant is or is likely to be using controlled substances. If a county chooses to require the participant to participate in a controlled substance abuse control program, then the county department shall:

(a) Require the participant to have an assessment by a certified drug treatment provider and to follow a rehabilitation plan, based upon the assessment, developed by a certified drug treatment provider, including, but not limited

to, participation in a controlled substance treatment program as a condition of continued receipt of assistance under the works program. This paragraph (a) shall not create an entitlement to rehabilitation services or payment for such services.

(b) If required by the rehabilitation plan, conduct random testing on such participant to determine if he or she is remaining free of controlled substances; and

(c) Impose any applicable sanctions for nonparticipation in a work activity on such participant in the event that he or she fails to follow the rehabilitation plan, including testing positive on a random test if conducted pursuant to paragraph (b) of this subsection (1) or refusal to participate in a random test if conducted pursuant to paragraph (b) of this subsection (I).

(2) A participant may not be sanctioned for failing to meet the requirements of the rehabilitation plan pursuant to paragraph (c) of subsection (l) of this section if the services required under such plan are not available, if transportation or child care is not available, or if the costs of the services are prohibitive.

Source: L. 99: Entire section added, p. 1360, § 2, effective June 3.

26-2-709. Benefits - cash assistance - programs. (1) Basic assistance grant.

(a)(I) Except as provided in this part 7 and subject to available appropriations, a participant shall receive a basic assistance grant in the amount of the AFDC cash grant that such participant would have received under rules governing the AFDC program in Colorado that were in effect on July 16, 1996, except for the child care disregard which shall be paid pursuant to the provisions of part 8 of this article. The earnings income disregard for Colorado works shall be two-

thirds of the participant's gross income and shall be applied for twelve cumulative months. The gross income test shall not apply to a participant of Colorado works during those months. After the receipt of twelve cumulative months of disregard, the income disregard for Colorado works shall consist of the earnings disregard a participant would have received under rules governing the AFDC program in Colorado that were in effect on July 16, 1996, except for the child care disregard which shall be paid pursuant to the provisions of part 8 of this article. No increase in the amount of the basic assistance grant approved by the state board shall take effect unless the funding for such increase is included and identified specifically in the annual general appropriations act or a supplemental appropriations act.

(II) Any county that operates a manual or electronic system for increasing earned income disregards that was in place as of December 31, 2000, may continue with that calculation or shall follow the requirements of subparagraph (I) of this paragraph (a).

(b) The state board shall promulgate rules to increase asset limitations for participants so that participants are encouraged to accumulate personal savings.

(c) The basic assistance grant provided pursuant to the provisions of this section may, at the discretion of the county, be paid to the participant, to vendors on behalf of the participant for protective payment pursuant to section 26-2-125, or to vendors on behalf of the participant at the voluntary agreement of the participant. A county may authorize payment of the basic assistance grant on a monthly basis or as a lump sum payment based upon the rules of the state board.

(1.5) **Rules concerning cash assistance.** The state board shall promulgate rules as may be necessary to comply with

changes in federal regulations relating to the definition of the term "cash assistance".

(2) **Other assistance.** (a) Subject to available appropriations, a county department may provide assistance, including but not limited to cash assistance, in addition to the basic assistance grant described in subsection (1) of this section that was provided to recipients of AFDC or JOBS or is authorized pursuant to the provisions of the federal law or this section. Such other assistance shall be intended to promote sustainable employment for the participants in the county.

(b) A county department shall provide assistance to help participants apply for and receive the earned income tax credit under applicable rules of the federal internal revenue service.

(c)(I) A county department may provide a voucher created pursuant to the provisions of this paragraph (c) to a participant for use at one of the community colleges administered pursuant to the provisions of article 60 of title 23, C.R.S., for the purpose of securing short-term educational and academic skills training and job placement services.

(II) The state department, the state department of labor and employment, and the state board for community colleges and occupational education created, in section 23-60-104 (1) (b), C.R.S., shall annually analyze job market information in order to establish a compilation of the types of jobs most appropriate and likely to lead to long-term self-sufficiency for participants. As used in this subparagraph (II), "job market information" means any state or regional job market or labor data or statistics or any information related to state or regional labor trends that the state department of labor and employment may have or to which it may have access.

(III) The state department shall collaborate with the state board for community colleges and occupational education created in section 23-60-104 (1) (b), C.R.S., to develop a tuition voucher system pursuant to which a participant may attend courses at an institution in the state's system of community and technical colleges by using a tuition voucher.

(IV) The state department and the state board for community colleges and occupational education created in section 23-60-104 (1) (b), C.R.S., shall enter into a cooperative arrangement to make available appropriate educational and academic training programs for participants who receive tuition vouchers.

(3) **Child care**. Subject to available appropriations and pursuant to rules promulgated by the state department, a county may provide child care assistance to a participant pursuant to the provisions of part 8 of this article and rules promulgated by the state department.

Source: L. 97: Entire part added, p. 1202, § 1, effective June 3. **L. 98:** (2) amended, p. 335, § 1, effective April 17. **L. 99**: (1.5) added, p. 31, § 2, effective July 1. **L. 2000**: (1.5) amended, p. 25, effective March 10. **L. 2001**: (l)(a) amended, p. 212, § 1, effective March 28.

26-2-709.5. Exit interviews and follow-up interviews of participants. (1) In order to follow the legislative intent declared in section 26-2-702 (1) (a), a county department is strongly encouraged to conduct exit and follow-up interviews upon case closure, either in person or by telephone, with all participants of the Colorado works program, including participants who are or have been receiving a state diversion grant pursuant to section 26-2-707 (1), or a county diversion pursuant to section 26-2-707 (2). Such interviews shall be for the purpose of providing information to the participant and offering assistance with

applications for or continuance of assistance under medicaid, food stamps, the Colorado child care assistance program, the earned income tax credit, or other programs such as welfare-to-work or other county benefits or services.

(2) Through ongoing evaluation of the Colorado works program, the state auditor's office shall evaluate the results and effectiveness of such interviews and make such information available and shall include its findings in a report to the legislative oversight committee.

Source: L. 2001: Entire section added, p. 654, § 1, effective August 8.

Editor's note: This section was contained in a 2001 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

26-2-710. Administrative review. (1) The state department shall promulgate rules for an administrative review process.

(2) All decisions of the state department shall be binding upon the county department involved and shall be complied with by such county department.

(3) If a participant does not agree with or fails to participate in a program or service identified in the IRC, the participant shall continue to receive the basic cash assistance grant that the participant received at the time the appeal is requested during the pendency of any appeal process.

(4) An applicant or participant who believes the IRC proposed by the county is unreasonable has a right to request a review of the proposed IRC by the county department pursuant to a process designated by the county in its written county policy. If the applicant or participant requests such review, the county shall provide the applicant or participant the opportunity for a county level review by a person not directly involved in the initial determination. The review

shall be limited to determining whether the terms of the disputed IRC are reasonable within the context of the county's written policy. The reviewer shall issue a written decision for the county regarding the resolution of the outstanding issues involving the proposed IRC. The time frame for such review shall be specified by the county in its written county policy.

Source: L. 97: Entire part added, p. 1203,§ 1, effective June 3. **L. 99**: Entire section amended, p. 659, § 2, effective May 18.

26-2-711. Works program sanctions against participants. (1) (a) The state board shall promulgate rules for the imposition of sanctions affecting the basic assistance grant as described in section 26-2-709 (1). The rules shall require:

(I) Imposition of sanctions upon a participant who fails, without good cause as determined by the county, to comply with the terms and conditions of his or her IRC;

(II) A percentage reduction in the basic assistance grant upon the first imposition of a sanction affecting such basic assistance grant, with the percentage to be specified in the rules but not less than twenty-five percent;

(III) Specific reductions in the basic assistance grant for second and subsequent sanctions affecting the basic assistance grant;

(IV) Imposition of sanctions either in the month following the decision to sanction and in subsequent months thereafter until the full amount of any sanctions have been withheld or, in the event that a participant has appealed the imposition of a sanction, in the month following the final decision of the appeal process and in subsequent months thereafter until the full amount of any sanctions have been withheld.

(b) Nothing in the state board rules promulgated pursuant to paragraph (a) of this sub section (1) shall prevent a county from denying the basic assistance grant in its entirety to a participant who refuses, as evidenced by an affirmative statement by the participant or demonstrable evidence, to participate in training, education, or work.

(c) The state board rules promulgated pursuant to paragraph (a) of this subsection (1) shall establish the period of time that sanctions affecting the basic assistance grant shall be in effect and the period of time within which a participant who has been denied the basic assistance grant by a county pursuant to paragraph (b) of this subsection (I) may take action for reinstatement into the works program.

(2) A county shall have the authority to determine and impose sanctions affecting other assistance as described in section 26-2-709 (2). Such sanctions shall be based upon fair and objective criteria that have been developed and adopted by the county and are consistent with state and federal law.

(3) If a county department elects to suspend payment of child care assistance, it may suspend such assistance in its entirety.

(4) In no event shall a county department impose any sanction on a participant that adversely affects the participant's receipt of food stamps beyond those allowable sanctions provided for in federal and state regulations or medical assistance pursuant to the provisions of article 4 of this title.

(5) (a) A person shall not be required to participate in work activities if good cause exists as determined by the county.

(b) Good cause does not constitute an exemption from work or time limits. Good cause is, however, a proper basis for not imposing a sanction for nonparticipation in a work activity, and may include, but need not be limited to,

participation in a Colorado works controlled substance abuse control program pursuant to section 26-2-708.5.

(6) If a participant fails to become involved in work within twenty-four cumulative months of receipt of assistance under the works program, the county department is authorized to terminate all assistance under this part 7 and part 8 of this article to the participant.

(7) If a participant or an applicant has misrepresented residence to obtain benefits in two or more states at the same time, such person shall be ineligible for benefits under the works program for a period of ten years.

Source: L. 97: Entire part added, p. 1203, § I, effective June 3. **L. 99:** (5) amended, p. 1361, § 3, effective June 3.

26-2-712. State department duties - authority. (1) **Plan submission.** The state department shall submit and amend as necessary a plan to the secretary of the federal department of health and human services that is consistent with the provisions of this part 7 and the personal responsibility and work opportunity reconciliation act.

(2) **County block grant allocation.** (a) The state department shall allocate the amount of moneys that shall be provided to a county as a county block grant for the purposes of a county's administration and implementation of the works program pursuant to the formulas described in section 26-2-714.

(b) Except as provided in section 26-2-720, the county block grant shall represent the total amount that a county shall receive from the state for the administration and implementation of the Colorado works program.

(3) **Maintenance of effort.** The state department shall monitor the state's progress toward meeting the levels of

spending required under the federal law and section 26-2-713.

(4) **Performance measurements.** (a) The state department shall develop performance goals and a formula for measuring a county's progress toward meeting such performance goals in administering and implementing the works program with county block grants. The state department shall provide data gathered on behalf of each county to the general assembly on a quarterly basis regarding employment- and training-related performance measures for the works program. Such data shall include wages earned by works program participants upon leaving the program, job retention rates, and other related information. Such data shall be provided through the state department's computerized systems, if available. Counties shall not be required to provide additional manual or computerized systems to gather such data. The state department shall work with the Colorado office of workforce development to gather data on works program participants who participate in training and job placement programs offered by workforce development boards and the result of such participation. Such data shall be provided to the state auditor's office on at least an annual basis as a part of the works program audit pursuant to section 26-2-723.

(b) The formula may be based upon the formula developed by the secretary of the federal department of health and human services after consultation with the national governors' association and the American public welfare association for measuring states' performance under the TANF block grants.

(5) **Oversight**. In connection with overseeing the works program, the state department shall have the specific duties to:

(a) Oversee the implementation of the works program statewide and, in connection with such oversight, develop standardized forms, in addition to the reporting form described in subsection (6) of this section, for the counties' use in streamlining the application process, delivery of services, and tracking of participants;

(b) Monitor the state's progress in meeting the work participation requirements set forth in the personal responsibility and work opportunity reconciliation act;

(c) Establish a process to implement the provisions for regionalization set forth in section 26-2-718 pursuant to which any combination of county departments may be approved by the state department to administer and implement the works program pursuant to the provisions of this part 7;

(d) Establish statewide goals and monitor the state's progress toward meeting such goals for the reduction in the incidence of out-of-wedlock pregnancies;

(e) Monitor the counties' provision of basic assistance grants pursuant to section 26-2- 709 and, if necessary due to increased caseloads or economic downturns, do the following to assure that the basic assistance grant is provided in a consistent manner statewide:

(I) Grant funds to one or more counties from the short-term works emergency fund administered pursuant to section 26-2-720; or

(II) If no funds administered pursuant to section 26-2-720 are available:

(A) Request supplemental appropriations from the general assembly, including but not limited to an appropriation from the long-term works reserve fund created pursuant to section 26-2-721; or

(B) Reduce the county block grant of any county that maintains funds in a county reserve account pursuant to section 26-2-714 (5) in order that moneys may be made available to one or more counties to avoid the need to reduce or eliminate the basic assistance grant statewide. If the state department makes a reduction in a county's reserve account pursuant to this sub-subparagraph (B), the state department shall increase such county's block grant for the following fiscal year by the amount of the reduction authorized pursuant to this sub-subparagraph (B); or

(III) After taking the actions described in subparagraphs (I) and (II) of this paragraph (e), take any actions necessary to reduce the costs of, or reduce or eliminate, the basic assistance grant statewide.

(6) **Reporting**. (a) The state department shall develop a uniform reporting form for the counties to use in order to fulfill the reporting requirements set forth in section 26-2-717.

(b) The state department shall develop a request for proposal pursuant to the provisions of section 26-2-719 to award a contract or contracts to an entity or entities to satisfy the reporting requirements set forth in section 26-2-717.

(c) In the event that the state department is not able to award a contract pursuant to the provisions of paragraph (b) of this subsection (6), it shall develop procedures to ensure that the state complies with the reporting requirements set forth in section 26-2-717.

(7) **Case management**. The state department shall develop training for case workers so that they are knowledgeable and may assist participants in:

(a) Identifying goals, including work activities, time frames for achieving self-sufficiency, and the means required to meet these benchmarks;

(b) Obtaining supportive services such as mental health counseling, substance abuse counseling, life skills training, and money management or parenting classes;

(c) Utilizing the family's existing strengths;

(d) Providing ongoing support and assistance to the family in overcoming barriers to training and employment; and

(e) Monitoring the progress of the family toward attaining self-sufficiency.

(8) **Migration monitoring**. The state department shall work with the counties to develop and collect data on interstate and intrastate migration of participants. The migration data shall include the number of participants who have moved into a county, the county from which such participants have migrated, and the reason for moving, and, to the extent feasible, the number of participants who have moved from a county, the county to which such participants are moving, and the reason for moving.

(9) **Waiver process.** (a) Except as provided in paragraph (c) of this subsection (9), the governor and the state department, acting jointly, may grant a county's application for a waiver of any requirement of this part 7 or the rules promulgated pursuant to this part 7. Any waiver granted pursuant to this subsection (9) shall be designed to improve methods of achieving participants' self-sufficiency, meeting work participation rates. and performance goals, or reducing dependency.

(b) Any application for a waiver shall include a statement of the purpose of the waiver. The application shall be submitted to the governor and the state department no later than October 1 of the year immediately preceding the year in which the county intends to implement the waiver. The county shall provide notice of its application to all adjacent

counties. The governor and the state department shall grant or deny the county's application no later than December 1 of the year in which the county applied. A waiver granted pursuant to this subsection (9) shall take effect on January 1 of the year immediately following approval of such waiver. The governor and the state department shall specify the duration of such waivers.

(c) The state department and the governor shall not approve an application under this subsection (9) that proposes to waive any statute or rule governing statewide eligibility, the amount of the basic assistance grant, the county maintenance of effort, or any requirement of the federal law. The governor and the state department shall not approve an application under this subsection (9) that proposes to waive a participant's right to appeal a county determination under the works program, but they may approve the waiver of statutes or rules governing the method or procedure for such appeal.

(d) The governor and the state department may approve any number of applications for waivers of one or more provisions of this part 7 or of the rules promulgated pursuant to this part 7, so long as such waivers meet the requirements of paragraphs (a), (b), and (c) of this subsection (9).

(e) In the event that the governor has reason to believe that a county's implementation of the works program pursuant to a waiver granted under this subsection (9) fails to satisfy the requirements of the federal law or is inconsistent with the purposes of the works program as set forth in section 26-2-705, the governor may revoke the waiver granted to the county and require the county to resume implementation of the works program pursuant to the provisions of this part 7 and the rules promulgated pursuant to this part 7.

(f) In the event that the governor and the state department grant waivers to a county pursuant to this subsection (9), the performance contract entered into between the county and the state department pursuant to section 26-2-715 shall be amended to reflect the county's authority to implement the works program in accordance with the waivers granted and the governor's authority to revoke the waivers in accordance with paragraph (e) of this subsection (9).

Source: L. 97: Entire part added, p. 1204, § 1, effective June 3. **L. 2001**: (4)(a) amended, p. 414, § 2, effective August 8; (9)(b) amended, p. 1174, § 13, effective August 8.

Editor's note: Subsections (4)(a) and (9)(b) were contained in 2001 acts that were passed without safety clauses. For further explanation concerning the effective dates, see page vii of this volume.

26-2-713. State maintenance of effort. The general assembly shall make annual appropriations from state funds for the works program which, together with the expenditures made by counties under the works program, shall be applied toward the state's maintenance of historic effort as specified in section 409 (a) (7) of the social security act.

Source: L. 97: Entire part added, p. 1208, §1 , effective June 3. **L. 2000:** Entire section amended, p. 280, § 2, effective March 31.

26-2-714. County block grants formula - use of moneys. (1) Subject to available appropriations, a county's block grant for the Colorado works program for state fiscal year 1997-98 shall be equal to one hundred percent of the total state and federal moneys that the county received in state fiscal year 1994-95 to administer and implement the AFDC program, the Colorado personal responsibility and employment demonstration program, and the JOBS program, including the administrative costs related to such programs.

(2) Subject to available appropriations, in state fiscal year 1998-99 and in each fiscal year thereafter, the state department, with input from the works allocation committee, created pursuant to the provisions of subsection (6) of this section, may adjust the county block grant identified in subsection (1) of this section by increasing or reducing the amount of such grant based upon factors that shall include but not be limited to:

(a) The county's population and the Colorado works program caseload;

(b) The unemployment rate in the county based upon the state department of labor and employment assessment of county unemployment rates for the prior year;

(c) The county's performance in meeting the obligations under the performance contract with the state department pursuant to the provisions of section 26-2-715;

(d) A county's failure to maintain its historic effort as required pursuant to subsection (6) of this section;

(d.5) The fact that the county received funds from the short-term works emergency fund in the previous fiscal year for works program expenditures, which may indicate that the previous fiscal year's allocation was insufficient to meet the county's needs;

(e) Other factors determined by the state department that. directly affect the population of needy families in a county.

(2.5) In the event that the state department and the works allocation committee do not reach an agreement on adjustments to the county block grants pursuant to the provisions of subsection (2) of this section on or before June 15 of each state fiscal year, the works allocation committee shall submit alternatives to the joint budget committee of the general assembly from which such joint budget committee

shall identify each individual county's block grant for the state fiscal year commencing on the immediately succeeding July 1.

(3) The state department shall not be authorized to reduce a county block grant pursuant to subsection (2) of this section based upon the amount of any moneys maintained by such county in a reserve account authorized pursuant to subsection (5) of this section.

(4) The state department shall identify the portion of moneys in the county block grant that may be spent on administrative costs.

(5) (a) A county shall be authorized to maintain a reserve account of county block grant funds pursuant to rules promulgated by the state department. At the end of each state fiscal year, a county shall remit to the long-term works reserve fund created in section 26-2-721 fifty percent of any amount in such county reserve account that is in excess of twenty percent of the total county block grant for such state fiscal year.

(b) A county shall be required to maintain in such county's social services fund created pursuant to section 26-1-123 any county funds that were appropriated pursuant to section 26-2-716 (1) (a) and section 26-1-122 (6) in order to meet the targeted spending level required pursuant to subsection (6) of this section but not actually expended on the works program during the state fiscal year for which the county appropriated such funds.

(6) (a) **Targeted spending levels.** For state fiscal year 1997-98 and each state fiscal year thereafter, a county's targeted spending level shall be an amount that meets or exceeds one hundred percent of the county's spending on AFDC, JOBS, and the administrative costs related to those programs in state fiscal year 1995-96.

(b) **Actual spending levels. 1997-98**. (I) For state fiscal year 1997-98, all counties collectively shall be required to meet an actual level of spending on the works program that constitutes eighty percent of what all counties collectively spent on AFDC, JOBS, and the administrative costs related to those programs in state fiscal year 1993-94.

(II) Subject to the provisions of subsection (8) of this section, the state department shall determine a specific spending level for each county for state fiscal year 1997-98 based upon the county's proportionate share of expenditures on AFDC, JOBS, and the administrative costs related to those programs in state fiscal year 1995-96, as compared to the total level of spending on such programs and costs for all counties for state fiscal year 1995-96.

(III) In no event shall a county's specific spending level for state fiscal year 1997-98 exceed the actual total expenditures in such county for the works program for state fiscal year 1997-98.

(c) **Actual spending levels - 1998-99 and thereafter**. (I) For state fiscal year 1998-99 and for each state fiscal year thereafter, all counties collectively shall be required to meet levels of spending on the works program that are set forth in the annual long appropriation act, subject to the provisions of subsection (8) of this section.

(II), For state fiscal year 1998-99 and for each state fiscal year thereafter, each county's actual level of spending shall be identified by the works allocation committee created in subparagraph (IV) of this paragraph (c) no later than June 15 of each state fiscal year for the immediately succeeding state fiscal year. Prior to determining each county's actual spending level, the works allocation committee shall ensure that all counties have been notified of the recommended actual spending level and given an opportunity to provide comment on the recommendation. In the event that the works

allocation committee does not reach an agreement on each individual county's actual level of spending for a state fiscal year on or before June 15 of such prior state fiscal year, the committee shall submit alternatives to the joint budget committee of the general assembly from which such joint budget committee shall identify each individual county's level of spending for a state fiscal year. The amount identified for a county's level of spending shall be identified in the county's performance contract with the state department entered into pursuant to section 26-2-715.

(III) The works allocation committee shall also identify the amount of mitigation that shall be allocated for a small county in accordance with the provisions of subsection (8) of this section. The works allocation committee may create a subcommittee that represents the interests of small counties as defined in subsection (8) of this section, which subcommittee may make recommendations concerning the mitigation amounts to be allocated for a small county pursuant to the provisions of subsection (8) of this section.

(IV) There is hereby created the works allocation committee that shall consist of seven members, five of whom shall be appointed by a statewide association of counties and two of whom shall be appointed by the state department. The appointing authorities shall consult with each other to ensure that the works allocation committee is representative of the counties in the state. If a statewide association of counties does not appoint a representative from the county that has the greatest percentage of the state's works caseload, the state department shall appoint such a representative from such county. The works allocation committee shall develop its own operational procedures.

(7) The county may transfer any amount of the county block grant that is designated as federal funds and that is specified by the state department as being available for

transfer within the limitation imposed by the federal law on transfers of federal funds from the temporary assistance for needy families block grant to the child care development fund if child care funds are not available.

(8) (a) As used in this subsection (8), unless the context otherwise requires:

(I) "Annual maximum mitigation amount" means that portion of the total amount of county funds identified in the annual long appropriation act that may be used for mitigation for small counties in that state fiscal year.

(II) "Mitigation" means a specific reduction in a county's targeted spending level established pursuant to paragraph (a) of subsection (6) of this section or a specific reduction in a county's actual spending level established pursuant to paragraph (c) of subsection (6) of this section that is authorized pursuant to the provisions of this subsection; (8). Mitigation can occur for targeted spending levels or actual spending levels or for both types of spending levels.

(III) "Small county" means a county with less than thirty-eight one hundredths of one percent of the total caseload of the works program statewide. The state department, with input from the works allocation committee, shall determine what shall constitute the total caseload of the works program and the time at which such caseload shall be established.

(b) Subject to the identification of an annual maximum mitigation amount in the annual long appropriation act and the criteria identified in paragraph (c) of this subsection (8), the works allocation committee created pursuant to subparagraph (IV) of paragraph (c) of subsection (6) of this section is authorized to identify the amount or amounts of any mitigation that shall be allocated to a small county in a specific state fiscal year. The works allocation committee shall notify the state department of any agreement

concerning the allocation of any annual maximum mitigation amount in accordance with the provisions of this subsection (8).

(c) The criteria that the works allocation committee shall use include but are not limited to the following:

(I) The assessment of the equity of a small county's total program expenditures as they relate to the targeted or actual spending level for the small county;

(II) The extent to which the small county will have insufficient revenues to meet its targeted or actual spending level; and

(III) The extent to which the provision of any mitigation may enhance the efforts of a small county or group of small counties to regionalize pursuant to the provisions of section 26-2-718

(9) (a) For state fiscal year 1997-98, and for each state fiscal year thereafter, a county may transfer any amount of the county block grant that is designated as federal funds and that is specified by the state department as being available for transfer within the limitation imposed by the federal law on transfers of federal funds from the temporary assistance for needy families block grant to programs funded by Title XX of the federal social security act.

(b) A county may make the transfer authorized by paragraph (a) of this subsection (9) only for expenditures that are allowable under programs funded by Title XX of the federal social security act, subject to the following provisions:

(I) If the funds transferred are used for the provision of child welfare services as defined in section 26-5-101 (3), the county may only make the transfer:

(A) After the county has made allowable expenditures of all funds in the county's capped or targeted allocation or allocations for child welfare services, other than for core services as referred to in section 26-5-101 (3) (f); and

(B) For the expenditures for child welfare services other than out-of-home placement services as described in section 26-5-101 (3) (i).

(II) A county shall not be required to appropriate funds to provide a county match pursuant to the provisions of section 26-1-122 for any funds transferred pursuant to the provisions of this subsection (9).

(III) A county shall be authorized to use funds transferred pursuant to the provisions of this subsection (9) for the purpose of supplanting funds that:

(A) The county would otherwise be required to appropriate pursuant to section 26-1- 122 in order to provide a county match for public assistance programs; or

(B) The county would otherwise appropriate in order to continue the provision of services under a program of public assistance administered with county only funds in the prior fiscal year.

(C) The state board shall promulgate rules governing procedures for transfers authorized pursuant to the provisions of this subsection (9).

(c) A county may make a transfer authorized by paragraph (a) of this subsection (9), within the limitations imposed by state and federal law on such transfers, in order to fund various programs for the improvement of child care. Such transfers may be used for minor remodeling of licensed child care facilities or facilities legally exempt from licensing requirements pursuant to section 26-6-103 (1), including but not limited to physical modifications for the

purpose of licensure or accreditation, construction or improvement of fencing or other safety and security fixtures or other uses not prohibited under 42 U.S.C. sec. 1397d.

(10) (a) If the state meets federal work participation rates and qualifies for a percent reduction in the state's maintenance of effort as specified in federal law for any year, the actual spending level for the works program of all counties collectively shall be reduced by the same amount as the amount of the reduction in the federal maintenance of effort requirement.

(b) For the purposes of this subsection (10), "percent reduction" means the percent of reduction of historical expenditures as that term is defined in section 409 (7) (b) of the federal social security act, as amended.

(c) For any year in which a percent reduction in the state's maintenance of effort requirement occurs, the works allocation committee created pursuant to subparagraph (IV) of paragraph (c) of subsection (6) of this section shall determine each county's share of the reduction in actual spending levels. Prior to making such determination, the works allocation committee shall ensure that all counties have been notified of the recommended reduction for each county and given an opportunity to provide comment on the recommendation. In the event that the works allocation committee does not reach an agreement on each individual county's reduction in actual spending levels, the committee shall submit alternatives to the joint budget committee of the general assembly from which such joint budget committee shall identify each individual county's reduction in actual spending levels. The state department is authorized to adjust each county's share of the reduction in actual spending levels. The state department is authorized to adjust each county's actual spending level for any percentage reduction earned in accordance with the determination of the works

allocation committee concerning each county's share of the reduction.

Source: L. 97: Entire part added, p. 1208, § 1, effective June 3. **L. 98:** (9) added, p. 779, § 1, effective May 22; (2), (5), and (6) amended and (2.5) and (8) added, p. 1192, § 2, effective June 1. **L 2000**: (2), (5)(a), (6)(c)(II), (7), (8)(a)(II), (8)(c), and (9)(a) amended and (10) added, p. 280, § 3, effective March 31; (9)(c) added, p. 36, § 1, effective May 14.

26-2-715. Performance contracts. (1) (a) An annual performance contract shall be entered into between a county or group of counties and the state department that shall identify the county's or group of counties' duties and responsibilities in implementing the works program and the Colorado child care assistance program, described in part 8 of this article. The performance contract shall include but not be limited to:

(I) Requirements and provisions that address the county's or group of counties' duty to administer, and implement the works program and the Colorado child care assistance program using fair and objective criteria;

(II) Provisions that prohibit the county or group of counties from reducing the basic assistance grant administered pursuant to section 26-2-709 and monitored by the state department pursuant to section 26-2-711 and provisions that prohibit the county or group of counties from restricting eligibility or the provision of services or imposing sanctions in a manner inconsistent with the provisions of this part 7 or the provisions in the state plan submitted to the secretary of the federal department of health and human services pursuant to section 26-2-712;

(III) Work participation rates for the county or group of counties that shall ensure that the state will be able to meet or exceed its work participation rates under the federal law.

(b) A county or group of counties may be sanctioned for not meeting any obligation under such performance contract. Such sanctions must be identified in the performance contract and may include a reduction in a future county block grant allocation.

(2) The performance contract shall set forth the circumstances under which the state department may elect that it or its agent assume the county's or group of counties' administration and implementation of the works program and the Colorado child care assistance program.

(3) If the state department and the county or group of counties are unable to reach agreement on the contract, either party may request the state board to consider the matter, and the state board shall schedule the matter for hearing within thirty days after receipt of the request. The state board shall issue a decision on the matter which shall be considered binding on all parties. If necessary to assure services are available within the county or group of counties, the state department may enter into a temporary agreement with the county or group of counties or with another public or private agent until the matter is resolved by the state board.

Source: L. 97: Entire part added, p. 1209, § I, effective June 3.

26-2-716. County duties - appropriations - penalties - incentives. (1) (a) (I) The board of county commissioners in each county of this state shall annually appropriate as provided by law such moneys as required pursuant to section 26-1-122 (6).

(II) In the case of two or more counties jointly administering a county block grant under the provisions of this part 7, each

county involved shall appropriate the funds necessary to defray its proportionate costs of implementing the works program.

(b) A county department shall keep such records and accounts in relation to the costs of administering and implementing the works program.

(c) Whenever any county anticipates that it may be financially unable to meet requests for assistance from participants, the county may seek additional moneys from the short- term works emergency fund administered by the state department pursuant to section 26-2-720.

(2) In connection with administering a county block grant, a county department shall:

(a) Meet the work participation rate as set forth in the performance contract with the state department pursuant to section 26-2-715;

(b) Report to the state department the information required to enable the state department to track participants' length of time for receipt of assistance and to enable the state department to provide written notice to applicants and participants of their rights;

(c) Provide written notification to applicants and recipients of their responsibilities and options available under the works program, including but not limited to time limits, domestic violence waivers, extensions or exemptions, and services available. Verbal notice shall be provided when requested.

(d) Submit the reports required pursuant to section 26-2-717;

(e) Use an income eligibility verification system (IEVS) to verify eligibility information against federal social security administration and internal revenue service files;

(f) Provide Title IV-D services to participants and require assignment of rights to child support by participants and participant cooperation with establishment and collection of child support, except as to participants receiving a diversion grant as that term is defined in section 26-2-703 (10);

(g) Make available opportunities for participants to have individual development accounts for home purchase, business capitalization, or higher education in accordance with federal law;

(h) Meet the required maintenance of effort as identified in section 26-2-714.

(2.5) The board of county commissioners in each county shall adopt official written policies for implementing aspects of the Colorado works program that counties have the statutory authority and flexibility to determine under this part 7. Such policies shall include, without limitation, a description of the kinds of assistance available under the Colorado works program within the county, any eligibility criteria for assistance that may be unique to the county, and the process by which such eligibility and assistance is determined on an individual basis. Such policies shall not be construed to create an entitlement to any service or benefit under the Colorado works program in any county for any applicant or participant, and shall not limit the flexibility of a county to respond to the individual circumstances of a participant. The board of county commissioners in each county shall make such policies available to applicants and participants.

(3) (a) No person in a work activity described in section 26-2-703 (21) shall be employed by, or assigned to, an employer if:

(I) Any other person is on layoff from the same or any substantially equivalent job with such employer; or

(II) Such employer has terminated the employment of any regular employee or otherwise caused an involuntary reduction of the workforce in order to fill the vacancy with a participant; or

(III) Placement of the person with the employer will result in a reduction of hours, regular or overtime, wages, or benefits of persons currently employed by the employer; or

(IV) The position is available due to a labor dispute, strike, lockout, or violation of a collective bargaining agreement.

(b) A uniform statewide grievance procedure for resolving complaints of alleged violations of displacements shall be established by the department of labor and employment.

(c) All state and federal laws affecting workers and employers shall apply to all participants, including but not limited to state and federal minimum and prevailing wage laws workers' compensation, unemployment insurance, occupational safety and health administration coverage where applicable, the federal "Fair Labor Standards Act of 1938", as amended, all federal, state, and local antidiscrimination laws, and all labor laws affecting the rights of employees to organize.

(d) All participants shall be entitled to the same wages and benefits, including but not limited to sick leave and holiday and vacation pay, as are offered to employees who are not participants and who have similar training or experience performing the same or similar work at a specific work place.

(4) (a) A county may not use county block grant moneys except as specifically authorized pursuant to the provisions of this part 7 and rules promulgated by the state board or state department to implement the provisions of this part 7. If the state department has reason to believe that a county has

misused county block grant moneys and has given the county an opportunity to cure the misuse and the county has failed to cure, the state department may reduce the county's block grant for the succeeding state fiscal year by an amount equal to the amount of moneys misused by the county.

(b) Any county found out of compliance with its performance contract or any provision of the works program may be assessed a financial sanction. The financial sanction must be replaced by county funds. The state board shall promulgate rules for county sanctions that include financial sanctions and may include other sanctions. Any funds resulting from such financial sanction shall be transmitted to the long-term works reserve fund created in section 26-2-721, but only if the state has not incurred a federal sanction for the same act that gave rise to the county sanction.

(5) A county may apply for hardship exemptions for needy families that have exceeded the sixty-month lifetime limit for receipt of assistance set forth in the federal law. Approval of such hardship exemptions shall be granted by the state department pursuant to fair and objective criteria as established by the state board.

(6) In the event that a county is unable to meet the need for assistance pursuant to section 26-2-709 (2), it may impose cost-reducing measures, including but not limited to proportionate reductions in such assistance, establishment of waiting lists for such assistance, or elimination of such assistance.

(7) A county that encompasses an Indian reservation shall consult with the respective Indian tribe concerning the administration and implementation of the works program by that county. Such consultation shall include but not be limited to:

(a) Possible exemption of the Indian tribe from the sixty-month time limit of the federal law if that tribe has more than one thousand members and an unemployment rate that exceeds fifty percent;

(b) Collection of statistical data on participants, funding for tribal data collection and tribal administration of federally and tribally funded programs;

(c) Cooperation and agreement concerning when a tribal member shall be referred to his or her respective tribe for assistance in finding work and how the costs for such assistance may be reimbursed by or otherwise shared with the county.

(8) A county may administer a Colorado works controlled substance abuse control program pursuant to section 26-2-708.5.

(9) County departments shall assist families in completing the reporting requirements for transitional medicaid. This shall include informing 1931 medicaid recipients, as defined in section 26-4-103 (1), of the transitional medicaid eligibility requirements and the required reporting calendar.

Source: L 97: Entire part added, p. 1210, § 1, effective June 3. **L. 98**: (2)(f) amended, p.766, § 17, effective July 1. **L. 99**: (2.5) added, p. 303, § 1, effective April 15; (8) added, p.1361, § 4, effective June 3. **L. 2000**: (4)(b) amended, p. 282, § 4, effective March 31. **L 2001**: (9) added, p. 737, § 1, effective July 1.

26-2-717. Reporting requirements. (1) The state department shall submit the following general case record information on participants to the federal government as required by the personal responsibility and work opportunity reconciliation act and as reported by a county department pursuant to section 26-2-716 (2) (d):

(a) The county of residence of the family;

(b) Whether a child receiving such assistance or an adult in the family is disabled;

(c) The ages of the members of such families;

(d) The number of individuals in the family, and the relation of each family member to the youngest child in the family;

(e) The employment status of all adults in the family and, if employed, the earnings thereof;

(f) The marital status of the adults in the family, including whether such adults have never married, are widowed, or are divorced;

(g) The race and educational status of each adult and child in the family;

(h) Whether the family has received subsidized housing, medical assistance pursuant to article 4 of this title, food stamps, or subsidized child care, and if the latter two, the amount received;

(i) The number of months that the family has received each type of assistance under the works program;

(j) If the adults in the family participated in, and the number of hours per week of participation in, the following activities:

(I) Education;

(II) Subsidized private sector employment;

(III) Unsubsidized employment;

(IV) Public sector employment, work experience, or community service;

(V) Job search;

(VI) Job skills training or on-the-job training;

(VII) Vocational education;

(k) Information necessary to calculate work participation rates;

(l) The type and amount of assistance received under the works program, including the amount of and reason for any reduction of assistance, including sanctions;

(m). Any amount of unearned income received by any member of the family;

(n) The citizenship of the members of the family;

(o) From a sample of closed cases, whether the family left the works program, and if so, whether the family left due to employment, marriage, the lifetime limit for receipt of assistance, sanction, or state policy; and

(p) The number of noncustodial parents who participated in work activities.

(2) The state department shall report names and addresses of unlawful aliens to the federal immigration and naturalization service at least four times per year, except with respect to individuals whose only federal benefit is medicaid.

(3) The state department shall report on use of county block grant moneys, including a statement of the percentage of the moneys that are used to cover administrative costs.

(4) The state department shall report on the total amount expended by the state during the quarter to provide transitional services to a family that has ceased to receive assistance under this part 7 because of employment, along with a description of such services.

Source: L. 97: Entire part added, p. 1213, § 1, effective June 3.

26-2-718. Regionalization (1) In the event that two or more counties agree to administer and implement the Colorado works program jointly, such counties shall submit resolutions from their boards of county commissioners to the state department that reflect their intention to administer and implement the Colorado works program jointly.

(2) The state department shall make a determination to approve or deny the resolutions and notify the counties within thirty days after the receipt of the resolutions.

(3) The state department, in conjunction with the boards of county commissioners of the affected counties, shall determine administrative, programmatic, and reporting requirements in connection with the joint operation of the works program by the counties.

Source: L. 97: Entire part added, p. 1214, § 1, effective June 3.

26-2-719. Private contracting. The state department and any county department are authorized to award contracts for the administration, implementation, or operation of any aspect of the works program to any appropriate public, private, or nonprofit entity in accordance with applicable county regulations, federal law, and the provisions of the state procurement code, articles 101 to 112 of title 24, C.R.S.; except that the state department may spend up to three million dollars in state fiscal year 1997-98 to implement automated systems to comply with specific requirements of the federal law without being subject to the provisions of the state procurement code.

Source: L. 97: Entire part added, p. 1215, § 1, effective June 3.

26-2-720. Short-term works emergency fund. (1) The state department shall create a short-term works emergency fund that shall consist of moneys annually appropriated to such fund by the general assembly.

(2) The state department shall be authorized to allocate moneys in the short-term works emergency fund:

(a) and (b) (Deleted by amendment, L. 2000, p. 278, § 1, effective March 31, 2000.)

(c) To counties that negotiate a higher work participation rate than the work participation rate required by the federal law;

(d) (Deleted by amendment, L. 2000, p. 278, § 1, effective March 31, 2000.)

(e) To counties for costs for basic assistance grants that are in excess of five percent more than the costs for basic assistance grants in the previous state fiscal year;

(f) To counties for the correction of technical errors in the determination of the amount of the county block grant that are in excess of five percent of the total amount of the county block grant;

(g) To counties for works program expenditures for emergencies that were not foreseen at the time county block grants were determined;

(h) To counties for allowable child care expenditures as provided in section 26-2-804 (3).

(2.5) In addition to the allocations authorized by the state department under subsection (2) of this section, for fiscal year 1999-2000, the general assembly may appropriate moneys in the short-term works emergency fund for the purpose of making transfers that are allowed under the federal law for transfers to programs funded by Title XX of

the social security act or for transfers to the child care development fund.

(3) Counties may request funds from the short-term works emergency fund for any of the purposes specified in subsection (2) of this section at any time during the fiscal year, subject to the following provisions:

(a) A county shall not be required to deplete any moneys in a county reserve account before seeking moneys from the short-term works emergency fund for the purposes identified in paragraph (c) or (f) of subsection (2) of this section;

(b) If a county requests funds from the short-term works emergency fund for the purposes identified in paragraph (e) or (g) of subsection (2) of this section, the county shall exhaust any funds available from the following sources prior to receiving funds from the short-term works emergency fund:

(I) The county's block grant for the Colorado works program for that state fiscal year; and

(II) The county's reserve account.

(c) (I) If a county requests funds from the short-term works emergency fund for the purposes identified in paragraph (h) of subsection (2) of this section, the county shall exhaust any funds available from the following sources prior to receiving funds from the short-term works emergency fund:

(A) The county's block grant for the Colorado works program for that state fiscal year;

(B) The county's block grant for the Colorado child care assistance program for that state fiscal year; and

(C) The county's reserve account.

(II) If the county department elects to treat the additional moneys received from the short-term works emergency fund for child care expenditures as a transfer to the child care development fund, the state department shall ensure that the amount of all such transfers does not exceed the limit imposed by the federal law on transfers of federal funds as described in section 26-2-714 (7).

(4) The state department may make allocations to counties out of the short-term works emergency fund during the state fiscal year or at the end of any state fiscal year. After such allocations are made for a particular state fiscal year, any funds that remain in the short-term works emergency fund at the end of the same state fiscal year shall revert to the long-term works reserve fund created in section 26-2-721.

(5) The state department shall annually report to the joint budget committee on any allocations made from the short-term works emergency fund, including the amount requested by each county and the county's reason for the request for funds, and the amount allocated to each county and the reasons for the department's decision regarding each request.

Source: L. 97: Entire part added, p. 1215, § 1, effective June 3. **L. 2000**: Entire section amended, p. 278, § 1, effective March 31; (2.5) added, p. 429, § 1, effective April 14.

Editor's note: Amendments to this section by Senate Bill 00-065 and Senate Bill 00-067 were harmonized.

26-2-721. Long-term works reserve fund creation - use. There is hereby created the Colorado long-term works reserve fund that shall consist of TANF block grant moneys, state general funds appropriated thereto by the general assembly, or moneys transferred pursuant to section 26-2-714 (5) (a), 26-2-716 (4) (b), or 26-2-720 (4). Moneys in the reserve fund shall be used only for the purpose of

implementing the works program, including but not limited to the provisions set forth in section 26-2-708 (5.5) if sufficient funds are available, or for the purpose of making transfers that are allowed under the federal law for transfers to programs funded by Title XX of the social security act or for transfers to the child care development fund and shall be subject to annual appropriation by the general assembly. Prior to requesting any appropriations out of the reserve fund for the purpose of making transfers, the state department shall consult with counties and provide information to the joint budget committee for the purposes of insuring that all transfers of TANF funds do not exceed the federal limits for transfers and insuring that the needs of counties to make transfers authorized pursuant to section 26-2-714 (7) and (9) are considered. Federal funds available to the state under the TANF block grant not otherwise appropriated shall be appropriated to the Colorado long-term works reserve fund. All interest derived from the deposit or investment of the moneys in the reserve fund shall be credited to the reserve fund.

Source: L. 97: Entire part added, p. 1216, § 1, effective June 3. **L. 2000**: Entire section amended, p. 283, § 5, effective March 31; entire section amended, p. 429, § 2, effective April 14. **L. 2000** Entire section amended, p. 981, § 6, effective August 8.

Editor's note: (1) Amendments to this section by Senate Bill 00-065 and Senate Bill 00-067 were harmonized.

(2) This section was contained in a 2001 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

26-2-722. Legislative oversight committee - created - repeal. (1) (a) The house and senate committees on health, environment, welfare, and institutions shall act as the welfare oversight committee. Such committees shall meet,

starting on or after September 1, 1997, and shall have the responsibility of overseeing the works program and its implementation by the counties.

(b) The two chairs and vice-chairs of the health, environment, welfare, and institutions committees and a minority party member of each committee designated by the minority leader of each house shall have the responsibility of preparing an annual report to the general assembly concerning the review of the works program. The annual report shall be submitted to the general assembly no later than January 15 of each year and shall summarize the aspects of the works program that have been considered and any recommended legislative changes.

(c) No later than January 15, 1999, the welfare oversight committee shall make recommendations concerning how to allocate any funds that the state receives as an illegitimacy bonus reward from the federal government. In making its recommendations on this issue, the welfare oversight committee shall consider how to make allocations based upon individual counties' success in reducing illegitimacy.

(2) (a) The welfare oversight committee is authorized to receive contributions, grants, services, and in-kind donations from any private entity to be expended for any direct or indirect costs associated with its duties set forth in this section.

(b) The director of research of the legislative council, the director of the office of legislative legal services, and the director of the staff of the joint budget committee shall supply staff assistance to the welfare oversight committee as they deem appropriate within existing appropriations.

(3) By September 1, 1997, the executive committee of the legislative council shall determine whether sufficient funds are available within the legislative appropriation to the

general assembly for the 1997-98 fiscal year to pay for the additional per diem and actual and necessary expense costs incurred pursuant to this section. The executive committee of the legislative council shall also identify in such plan any permanent sources of funding for such costs. Among the options considered by the executive committee to fund this section for the 1997-98 fiscal year, the executive committee may consider reducing the number of days of special session budgeted within the legislative appropriation. Upon a determination that sufficient funds are available within budget line items in the legislative appropriation to the general assembly for the 1997-98 fiscal year, such plan shall be implemented by a budget amendment adopted by the executive committee of the legislative council for such fiscal year.

(4) This section is repealed, effective July 1, 2004.

Source: L. 97: Entire part added, p. 1216, § 1, effective June 3. **L. 2001**: (4) amended, p. 654, § 2, effective August 8.

Editor's note: Subsection (4) was contained in a 2001 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

26-2-723. Evaluation - audit committee - repeal. (1) The state auditor's office shall oversee the implementation of an evaluation of the works program pursuant to the provisions of this section. Out of any funds appropriated by the general assembly to cover the costs of the evaluation described in this section, the state auditor's office shall be able to cover its reasonable and necessary costs incurred in connection with administering the contract for such evaluation.

(2) No later than August 1, 1998, the state auditor's office shall issue a request for proposals for a public or private entity to conduct the evaluation. The state auditor's office

shall seek input from a statewide association of counties, any county that is not represented by such an association, the state department, and representatives of advocate groups in developing the request for proposals for the evaluation.

(3) (Deleted by amendment, L. 2001, p. 1174, § 14, effective August 8, 2001.)

(4) (a) The goals of the evaluation shall be to obtain an objective analysis of the out comes realized as a result of the implementation of the works program. Such outcomes shall include but not be limited to:

(I) The number of adults who leave the works program for employment;

(II) The extent to which job placements result in job retention;

(III) The rate at which participants return to the program after periods of employment;

(IV) The extent to which job placements are leading participants to long-term self-sufficiency;

(V) The number of adults who leave the works program for other reasons;

(VI) The impact of the implementation of the works program on the medicaid, child care, and child welfare programs operated in the state.

(b) The baseline year is state fiscal year 1997-98.

(5) The evaluation shall not duplicate the monitoring and oversight responsibilities of the state department pursuant to section 26-2-712 nor shall it seek to address any individual county's implementation of the works program pursuant to the terms of such county's performance contract with the state department.

(6) The state auditor's office and the entity that conducts the evaluation shall have access to the following documents and records in connection with the works program:

(a) All records, documents, and reports maintained by the state department;

(b) All county plans for the implementation of the works program.

(7) The entity that conducts the evaluation shall report on a quarterly basis to the state auditor's office concerning its progress in completing the evaluation pursuant to the terms of this section.

(8) This section is repealed, effective July 1, 2004.

Source: L. 98: Entire section added, p. 1196, § 3, effective June 1. **L. 2001**: (2) and (3) amended, p. 1174, § 14, effective August 8.

Editor's note: Subsections (2) and (3) were contained in a 2001 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

DONALD M. CASSATA, Director of the Adams County Department of Social Services, and ADAMS COUNTY BOARD OF SOCIAL SERVICES,

Petitioners,

v.

FRANCES F. WESTON, CHRISTINE M. KNEUBEHL, and SHAUNA DISHER, on behalf of themselves and all others similarly situated,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE STATE OF COLORADO

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Whether this Court should decline to exercise jurisdiction on prudential grounds where review is sought on a substantive judgment that is entirely supported by adequate and independent state law grounds, with the only independent federal question presented by an ancillary award of attorney's fees.

Whether the Colorado Court of Appeals erred in concluding, as a matter of state law, that the Colorado statutes, regulations, policies and practices that implement the Colorado Works Program create a protectable property interest in a family's continuing receipt of welfare benefits.

Whether the additional issues discussed in the Petition are beyond the scope of the Question Presented stated by Petitioners, and were waived in the proceedings below, and therefore are not subject to review.

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STATEMENT ON JURISDICTION

This Court technically has jurisdiction pursuant to 28 U.S.C. § 1257. Nevertheless, this Court should decline to exercise its jurisdiction on prudential grounds when all of the substantive relief awarded in the judgment below is supported by adequate and independent state law grounds, and the only independent federal question arises from the trial court's ancillary award of attorney's fees under 42 U.S.C. § 1988, particularly when the underlying decision pursuant to 42 U.S.C. § 1983 is premised on a state court's construction of that state's law.

RESPONSE TO STATEMENT OF THE CASE

Respondents incorporate by reference the statements of facts in the opinions of the Colorado Court of Appeals and the District Court, as presented in the Appendices accompanying the Petition.[1]

In contrast to the presentation of facts set out in the Petition by Petitioners Donald M. Cassata and the Adams County Board of Social Services (herein, "Petitioners" or "Adams County"), the following facts are particularly noteworthy:

First, at no time in this case have Respondents sought relief under the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRWORA"), Pub. L. 104-193, 110 Stat. 2105 (codified principally at 42 U.S.C. §§ 601, *et seq.*). Respondents have never alleged

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1. Citations to these appendices are presented in the form "App. X, at xx."

that the federal statute created any kind of property right in the continued receipt of benefits. Rather, Respondents always have maintained that their protectable property interest for purposes of due process analysis arises exclusively from Colorado state law. *See* R., I, 115-187A; II, 396-473; VI, 1399-1403; VI , 1470-1533; VII, 1668-1682; X, 77-93.[2]

Second, the Record amply demonstrates, as the trial court found and the appellate court affirmed, that each member of the plaintiff class was eligible for cash assistance benefits under the CWPA. *See* App. A, at 3a; App. B, at 34a. As a result, under the Colorado statutory scheme for the Colorado Works Program, Petitioners lacked discretion, without some defined good cause as set out in the CWPA, to reduce or terminate the continuing cash assistance that these class members were receiving. *See* App. B., at 22a-23a. The Record includes direct testimony by Adams County officials, including Petitioner Cassata, admitting that Adams County lacked any discretion under state law to reduce or discontinue cash assistance benefits to eligible participants. *See* R., XIII, 239 and 263, 266. Similarly, state officials from the Colorado Department of Human Services ("CDHS"), the state agency responsible for overseeing county administration of welfare programs, including the Colorado Works Program, confirmed at trial that Adams County officials lacked discretion under state law to deny cash assistance benefits to eligible participants. *See* R., XIII, 27 and 75.

Third, the trial court found as a matter of fact, and the appellate court affirmed, that Petitioners had pursued an

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2. Citations to the multi-volume trial court Record in this case, which was certified by the District Court to the Colorado Court of Appeals, are presented in the form "R., X, xx-xx."

intentional policy of refusing to provide adequate sanction notices to participants in the Colorado Works Program even after Colorado's administrative law judges and state officials ruled that the notices Petitioners were using to impose sanctions under the Colorado Works Program Act ("CWPA"), Colo. Rev. Stat. §§ 27-2-201, *et seq.*, were inadequate under Colorado state law and regulations, and therefore of no legal effect under Colorado law. *See* App. A, at 3a-4a; R., XIII, 47 and 244, 245-46 and 277-78. In fact, as the trial court concluded, in a finding that was not challenged on appeal, Petitioners pursued a policy of intentionally seeking to avoid judicial review (within the Colorado administrative law system) of the adequacy of their sanction notices in a purposeful venture to avoid providing notices that would give adequate and accurate information to participants in the Colorado Works Program. *See* App. B, at 32a and 42a; *see also* App. A, at 17a.

Fourth, based on its exhaustive canvass of the thousands of sanction notices that were introduced into evidence during the trial, the District Court found, as a matter of fact and state law under the Colorado Administrative Procedures Act ("Colorado APA"), that all of the sanction notices were legally defective, and that as a result, Colorado law dictated that the sanctions issued by Adams County pursuant to these defective notices were of no legal effect. *See* App. B, at 23a-26a and 47a; *see also Weaver v. Colorado Dep't of Social Services*, 791 P.2d 1230, 1233 (Colo. Ct. App. 1990) (holding that sanctions imposed pursuant to legally inadequate sanction notices are void). The trial court's substantive conclusion that the sanction notices were defective under state law were not challenged by Petitioners in their direct

appeal to the Colorado Court of Appeal.[3] Petitioners also failed to challenge this state-law conclusion in their petition for certiorari review before the Colorado Supreme Court.

Finally, the Record demonstrates that the effects of the punitive sanctions imposed on the basis of these inadequate notices were disastrous for the families involved. Families at the edge of poverty when they entered the Colorado Works Program were, as a result of the sanctions, bereft of their sole source of support. One class representative testified that she was left with no choice but to move out of state and away from the five grandchildren for whom she had been caring. *See* R., XIV, 157. Another class representative testified that her family became homeless as a result of the loss of cash assistance. *See* R., XIV, 97. For all members of the plaintiff class, the consequences of Petitioners' conduct were real and tragic.[4]

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3. With respect to the trial court's judgment of a violation of the Colorado APA arising from sanction notices that were defective under the state regulations, Petitioners' only challenge on appeal attacked the trial court's determination that there was no requirement to exhaust administrative remedies for this claim. The appellate court conclusively rejected this argument on state-law grounds. *See* App. A, at 17a. Petitioners' did not challenge, either before the Colorado Court of Appeals or the Colorado Supreme Court, the trial court's findings of substantive violations of the state regulations.

4. Both the trial court and the Colorado Court of Appeals denied motions by Petitioners to stay the operation of the injunctive and equitable relief awarded by the trial court. Subsequently, at oral argument before the Colorado Court of Appeals, counsel for Petitioners indicated that in the event the trial court's judgment were reversed, Petitioners would not seek to require Respondents or members of the plaintiff class to pay back the moneys that have been reimbursed to them as a result of the trial court's equitable relief.

REASONS FOR DENYING THE WRIT

I.

This Court Should Not Exercise Its Jurisdiction On Prudential Grounds Because The Only Relief Awarded By The State Court That Is Not Supported By Adequate And Independent State Law Grounds Is Its Award Of Attorney's Fees.

This Court will not review a question of federal law decided by a state court if the judgment of that state court rests on a state law ground that is independent of the federal question and adequate to support the judgment. *See Coleman v. Thompson*, 501 U.S. 722, 729 (1991); *Fox Film Corp. v. Muller*, 296 U.S. 207, 210 (1935). Moreover, in the context of a petition seeking certiorari review of a state court judgment, the independent and adequate state ground doctrine is jurisdictional. *See Coleman*, 501 U.S. at 729.

Under this doctrine, when a state court judgment is "clearly and expressly" based upon state law, then the Supreme Court lacks jurisdiction to review any federal question that might be separately raised in the case. *See Harris v. Reed*, 489 U.S. 255, 261 (1989); *California v. Freeman*, 488 U.S. 1311, 1313 (1989) (O'Connor, J., sitting as Circuit Justice); *cf. Michigan v. Long*, 463 U.S. 1032, 1041 (1983) (requiring a "plain statement" of the state law basis of a state court judgment to avoid federal question review). To reach a decision on a federal question under circumstances where the judgment below is independently supported by an adequate state law basis would amount to an advisory opinion, which is barred by the limitations on the judicial power set out in Article III of the United States Constitution. *See Lambrix v. Singletary*, 520 U.S. 518, 523 (1997); *Herb v. Pitcairn*, 324 U.S. 117, 125-26 (1945).

In this case, Respondents brought suit against Petitioners on three separate causes of action, with two of those causes arising solely under state law, *i.e.*, the Colorado APA and the due process clause of the Colorado Constitution. *See* R., I, 115-187A. Only the third cause of action in this case — the claim under 42 U.S.C. § 1983 — arose under federal law. *See id.*

The trial court found in favor of Respondents on all three causes of action, including the two state-law claims. *See* App. B, at 47a-48a. In connection with the violations of state law, the trial court concluded that Adams County's sanction notices failed to meet the specific requirements of the administrative regulations promulgated by CDHS for sanctions in cases under the CWPA. *See* App. B, at 23a-26a and 47a. The trial court also concluded that the sanction notices failed to provide due process under the Colorado Constitution. *See* App. B., at 40a-42a and 47a-48a.

All of the substantive relief sought and received by the Respondents — a declaration that prior sanction notices were unlawful, an injunction requiring adequate notices going forward, and equitable remedies aimed at reversing the prior sanctions — was fully supported under Respondents' state-law claim pursuant to the Colorado APA. *See* Colo. Rev. Stat. § 24-4-106(7) (providing Colorado courts with authority to reverse an administrative adjudication for violations of applicable state law or regulations). Moreover, the trial court's conclusion that Petitioners had violated the Colorado APA was reached independently of the trial court's analysis of the due process issues under the Section 1983 claim. *Compare* App. B., at 23a-26a *with* App. B, at 40a-42a.

The only relief provided by the trial court that arguably was not explicitly awarded pursuant to Respondents' Colorado APA claim was the ancillary award of attorney's fees, which the trial court specified as arising under 42 U.S.C. § 1988. *See* App. B., at 51a.

Thus, in this case, because the substantive relief awarded by the trial court is entirely supported by adequate and independent state law grounds, the only basis for this Court's potential jurisdiction here is the trial court's award of ancillary attorney's fees. Under such circumstances, there is no prudential reason to grant the Writ solely to review a federal question that could be implicated, if at all, ***only*** in connection with an award of attorney's fees. *Cf. Hutto v. Finney*, 437 U.S. 678, 695 (1978) (holding that an award of attorney's fees under Section 1988, when ancillary to an order providing prospective injunctive relief, does not implicate the Eleventh Amendment); *Missouri v. Jenkins by Agyei*, 491 U.S. 274, 279-80 (1989) (same); *compare Moran v. Pima County*, 474 U.S. 989 (1985) (denying *certiorari*, over dissent of Justice White, in case presenting question of propriety of awarding attorney's fees on a claim pursuant to 42 U.S.C. § 1983). Indeed, because the principal purpose for which this Court exercises its *certiorari* jurisdiction is to resolve important conflicts among the Circuit Courts of Appeal and the state courts concerning the meaning of provisions of federal law, *see Braxton v. United States*, 500 U.S. 344, 347 (1991), there is no prudential reason to review this case when the substantive judgment below depends entirely on interpretations of state law.

II.

As Authoritatively Construed By Colorado's Courts, Colorado Law Creates A Constitutionally Protected Property Interest In The Continued Receipt of Benefits Under The Colorado Works Program Act.

This Court lacks authority to overturn a construction of state law authoritatively reached by a state court. *See Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 484-85 & n.9 (1981) ("Even if the state court should tell us that a state statute has a meaning that we believe the state legislature plainly did not intend, we are not free to take our own view of the matter."). Thus, as shown below, even if the Court were to exercise its jurisdiction to review this case, despite the adequate and independent state law grounds for all of the substantive relief awarded by the trial court, this Court's review would be confined by the authoritative construction of the state law — the CWPA — that was reached by the trial court, affirmed by the appellate court, and left undisturbed by the Colorado Supreme Court. *See* App. A, at 8a-9a and 13a; App. B., at 36a-38a. Because the single issue raised by Petitioners in their Petition — whether Respondents enjoyed a constitutionally protectable "property" interest — was decided on the basis of state law, there is no basis for the Court to grant the Writ here.

A. Property interests, for due process analysis, are created and defined by state law.

In this case, in addition to their state-law claims, Respondents sought relief under 42 U.S.C. § 1983 for being deprived of rights guaranteed under the Due Process Clause of the Fourteenth Amendment of the United States

Constitution. *See* R., I, 115-187A. Respondents alleged that they had been deprived of property without due process of law when their cash assistance benefits under the Colorado Works Program were reduced without an adequate notice and opportunity to be heard. *See id.* The essence of Respondents' due process claim under 42 U.S.C. § 1983 was their contention that the notices issued by Adams County prior to imposing sanctions on the Respondents were factually and legally inadequate to give Respondents a reasonable opportunity to be heard on the merits of the sanctions. *See id.* In making this claim, Respondents were required to show that they had a protectable property interest in the money being withheld by Petitioners. *See Board of Regents v. Roth*, 408 U.S. 564, 577 (1972). Respondents asserted that their "property," for purposes of due process analysis, lay in their right based on Colorado state law to continue to receive cash assistance under the Colorado Works Program for as long as they continued to meet eligibility criteria. *See* R., I, 115-187A.

Property interests that may be protected on due process grounds arise and are defined by virtue of ***state*** law. *See Perry v. Sindermann*, 408 U.S. 593, 601 (1972); *see also Cleveland Bd. of Educ. v. Loudermill*, 4701 U.S. 532, 538 (1985); *Goss v. Lopez*, 419 U.S. 565, 573 (1975); *Bishop v. Wood*, 426 U.S. 341, 345-46 (1976). A property interest that is protected by the Due Process Clause of the Fourteenth Amendment is one that arises from "such rules or mutually explicit understandings" that support an expectation of a benefit. *See Perry*, 408 U.S. at 601; *see also Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 430 (1982) ("The hallmark of property, the Court has emphasized, is an individual entitlement grounded in state law, which cannot be removed except 'for cause.'").

Indeed, the cases are uniform that when a state official lacks discretion in connection with a person's receipt of a government benefit, or when a government benefit may be withdrawn only upon a showing of a specific good cause, then the government benefit is deemed to be "property" within the meaning of the Due Process Clause. *See, e.g.*, *Jacobs v. Visconsi & Jacobs Co. v. City of Lawrence*, 927 F.2d 1111, 1116 (10th Cir. 1991); *RRI Realty Corp. v. Incorporated Village of Southampton*, 870 F.2d 911, 918 (2d Cir. 1989). Similarly, once a government benefit has been granted pursuant to a state law or regulation, the constitutionally protected property interest in that benefit continues for the duration of the benefit. *See Bell v. Burson*, 402 U.S. 533, 539 (1971); *see also Reynolds v. Guiliani*, 35 F. Supp. 2d 331, 341 (S.D.N.Y. 1999) (holding that welfare recipients in New York, funded by the same federal TANF program at issue in this case, "have an overarching property interest in their continued receipt of . . . cash assistance").

B. The Respondents' property interest in continuing welfare benefits arises from Colorado state law and regulations.

The trial court and the Colorado Court of Appeals in this case both concluded that under that state statute in question here — the CWPA — as well as under the extensive factual record, Respondents' interest in the continued receipt of cash assistance from the Colorado Works Program is "property" for purposes of due process analysis. *See* App. A., at 13a; App. B. at 35a-36a. The legal basis for this conclusion emanates exclusively from the language of the CWPA and its implementing regulations, which are replete with various mandatory provisions requiring county officials to award cash assistance to an eligible participant; these statutes and regulations

do not permit any discretion to county officials to deny or reduce cash assistance to eligible participants without a specifically defined cause. *See* Colo. Rev. Stat. § 26-2-709(1)(a) (expressing in mandatory language the requirement that eligible participants "shall receive" cash assistance); § 26-2-710(3) (mandating the continuation of cash assistance during an administrative appeal); 9 Colorado Code of Regulations 2503-1, §§ 3.830 and 3.615.1.

Both the trial court and the appellate court recognized that under Colorado state law, Petitioners have no discretion other than to award cash assistance to a person who meets the low-income and other eligibility requirements of the Colorado Works Program. *See* App. A, at 13a; App. B, at 36a. This conclusion is also supported by the extensive factual record in which Adams County officials testified that they lacked discretion under applicable state laws and regulations with respect to continuing to provide benefits for eligible participants. *See* R., XIII, 239; XIII, 263 and 266.

The state-law basis of the Respondents' "property" interest in the continued receipt of cash assistance is apparent from the court opinions in this case, which recite ***only*** state statutory and regulatory provisions indicating that the receipt of benefits is mandatory. *See* App. A, at 8a; App. B, at 36a. Because this Court is bound by a state court's interpretation of that state's law, Petitioners cannot overcome the ***state-law*** foundation of the Colorado courts' decisions in this case. *See Clover Leaf Creamery*, 449 U.S. at 484-85. That is, as a matter of Colorado state law, the "no entitlement" language of the CWPA does not extinguish the Respondents' property interest. *See* App. A, at 13a; App. B, at 36a-38a.

C. The "no entitlement" language of the federal PRWORA has no effect on the Respondent's property interest in continuing welfare benefits.

In the face of this record, with respect to both the meaning of Colorado state law and the factual understandings of the parties themselves, Petitioners resort to a false syllogism. Petitioners would have the Court conclude that the "no entitlement" provision in the ***federal*** law, the PRWORA, should have the effect of extinguishing a property interest that was created by ***state*** law, the CWPA. *See* Petition, at 16. This contention, however, has no precedent.

Moreover, the Petitioners' argument is in direct conflict with the actual text of the federal provision, which explicitly limits its effect to interpretations of the federal statute, rather than interpretations of any state statute: "***This part*** shall not be interpreted to entitle any individual or family to assistance under any State program funded under this part." *See* 42 U.S.C. § 601(b) (emphasis added). Thus, whatever the Court may conclude that Congress meant with its "no entitlement" language in the federal statute, the provision can only be read as an instruction to courts considering the meaning of "This part" of the United States Code, *i.e.*, the PRWORA. *See id.* As a matter of plain text, the federal "no entitlement" language is not intended to affect judicial constructions of any state law. *See id.* Moreover, there is no evidence in the text of the PRWORA or in the legislative history of the statute that Congress intended its limited "no entitlement" provision to have any preemptive effect over property interests created exclusively through the operation

of state law.[5] *Cf. New York v. Federal Energy Regulatory Comm'n*, __ U.S. __, 122 S. Ct. 1012, 1023 (2002) ("[T]he Court 'start[s] with the assumption that the historic police powers of the States were not to be superseded . . . unless that was the clear and manifest purpose of Congress.'") (quoting *Hillsborough County v. Automated Med. Labs.*, 471 U.S. 707, 715 (1985)).

Indeed, there is absolutely no requirement in the federal PRWORA that requires the States to enact similar "no entitlement" provisions, and the vast majority of States have no such provision. Moreover, there is nothing in Colorado's "no entitlement" provision that indicates the Colorado language is anything other than an expression of Colorado policy with respect to Colorado's approach for funding the Colorado welfare program. *See* Colo. Rev. Stat. § 26-2-704(1).

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5. Even if the federal "no entitlement" provision could be read as authorizing, rather than requiring, the States to extinguish the due process rights of welfare participants, such an interpretation would be constitutionally impermissible. *See Saenz v. Roe*, 526 U.S. 489, 508 (1999) ("Congress has no affirmative power to authorize the States to violate the Fourteenth Amendment and is implicitly prohibited from passing legislation that purports to validate any such violation.").

The more likely and sensible interpretation of Congress' intent in enacting the "no entitlement" language in the federal statute is the one offered by the Colorado Court of Appeals. As that court suggested, the "no entitlement" language was meant to signal the end of an unconditional grant of welfare benefits and to prevent potential recipients of benefits under state-administered welfare programs from suing to require the ***federal*** government to fund the ***state*** welfare programs. *See* App. A, at 12a.

In construing Colorado ***state*** law to create "property" in continuing welfare benefits, the courts below fully respected the hortatory "no entitlement" language of the ***federal*** statute. Thus, and as required by the PRWORA, the courts below did ***not*** interpret that statute "to entitle any individual or family to assistance." *See* 42 U.S.C. § 601(b). Instead, the courts below found the source of the Respondent's right to continuing welfare benefits to emanate from Colorado state law, rather than the federal law. *See* App. A, at 13a; App. B, at 36a. Without any affront to the federal statute, the courts below concluded that the numerous mandatory grant provisions contained in the CWPA create the mutual and explicit expectation of continued receipt of benefits that is sufficient to trigger a "property" right for purposes of due process analysis. *See id.*

In light of the fact that the Colorado courts were entitled to render their own interpretation of the meaning of the Colorado statutes in question, *see Clover Leaf Creamery*, 449 U.S. at 484-85, and in having done so, found a property interest created under state law, this Court is bound by those courts' interpretation of Colorado law, which found that Respondents had a property interest that was subject to the requirements of the Due Process Clause of the Fourteenth Amendment. *See Perry*, 408 U.S. at 601. As a result, any sanction under the Colorado Works Program, because of its effects on a protected property interest, is subject to the requirements of procedural due process. *See Goldberg v. Kelly*, 397 U.S. 254, 267-68 (1970).

III.

This Court Should Not Review Issues That Are Not Fairly Included Within The Question Presented.

At the close of their Petition, Petitioners raise two issues, without the benefit of any point-headings or argument outline, concerning: (1) the constitutional adequacy of the sanction notices; and (2) the *Parratt/Hudson* doctrine. *See* Petition, at 17-19. Both of these issues, however, are far afield from the "Question Presented" stated by Petitioners in their Petition. *See id.*, at i.

This Court will not review issues that are not "fairly included" within the question presented by a petitioner. *See* S. Ct. R. 14(1)(a); *see also Izumi Seimitsu Kogyo Kabushiki Kaisha v. United States Philips Corp.*, 510 U.S. 27, 30-31 (1993). Thus, in addition to the substantive reasons presented below, the Court should not consider the final arguments by Petitioners because these issues are not fairly included within the Question Presented.

Nevertheless, even if the Court chooses to consider these issues, neither issue provides a basis for the grant of a Writ.

A. The record fully supports the trial court's conclusion that the sanction notices were constitutionally inadequate.

Petitioners contend that the trial court erred by including as one of the defects of the sanction notices the fact that the notices did not "contain the exact monetary amount of the sanction and the exact monetary effect that sanction may have on any future sanctions." *See* Petition, at 17. Petitioners contend this finding goes too far under the constitution. *See id.*

Petitioners, however, completely ignore the multitude of other, and more substantial, defects in the sanction notices that were found by the trial court and which they did not challenge in the Colorado Court of Appeals or in their petition for state *certiorari* from the Colorado Supreme Court. *See* App. B, at 42a-46a (cataloguing the various deficiencies of the more than 4,000 sanction notices entered into evidence in this case). In fact, the trial court found that among the various deficiencies of the sanction notices, the most consistent defect was a failure to correctly explain the factual basis for the sanction. *See* App. B, at 42a.

Numerous lower courts have held, with no evidence of controversy on this point between the Circuits or among the States, that due process in the context of welfare benefits requires a written notice that explains the reasons for a reduction in benefits, and the reason must be stated in terms and with enough detail so that the person receiving the notice can understand it and be prepared for the issues to be addressed at a hearing, if one is requested. *See Gray Panthers v. Schweiker*, 652 F.2d 146, 168 (D.C. Cir. 1981); *Dilda v. Quern*, 612 F.2d 1055, 1057 (7th Cir. 1980); *Doston v. Duffy*, 732 F. Supp. 857, 872 (N.D. Ill. 1988); *Ortiz v. Eichler*, 616 F. Supp. 1046, 1061-62 (D. Del. 1985), *aff'd*, 794 F.2d 889 (3d Cir. 1986); *Meyer v. New Jersey Dep't of Human Servs.*, 635 A.2d 544, 546-47 (N.J. App. Div. 1993).

The trial court found as matter of fact that the sanction notices issued by Adams County failed in every instance to apprise the participant of the specific reasons for the sanction or to provide sufficient information for the participant to be prepared for a hearing on the sanction. *See* App. B, at 42a. As a result, regardless of whether showing the exact amount of money at issue in a sanction is a requirement of

constitutional due process, it is clear that the sanction notices failed to provide the kind of notice and opportunity to be heard that lies at the core of the Due Process Clause. *See Goldberg*, 397 U.S. at 267-68.

B. The *Parratt/Hudson* doctrine is inapposite in this case because the deprivation of property by Petitioners was not "random and unauthorized."

The final issue discussed by Petitioners in their Petition is their contention that Respondents' Section 1983 claim for a federal, procedural due process violation should have been barred under *Parratt v. Taylor*, 451 U.S. 527 (1981), and *Hudson v. Palmer*, 468 U.S. 517 (1984), purportedly because Respondents could have received the relief sought in this case under Colorado's declaratory judgment statute. *See* Petition, at 18-19. Petitioners contend that the courts below "ignored" the availability of this state-law remedy. *See id.*, at 19.

One reason the courts below "ignored" this argument is that Petitioners never properly raised it. Petitioners did not raise this argument at any time during the proceedings in the trial court, and they failed to present this argument in the appellate courts until their reply brief to the Colorado Court of Appeals. *See Vanderbeek v. Vernon Corp.*, 25 P.3d 1242, 1248 (Colo. Ct. App. 2000) (holding that an issue raised for the first time in a reply brief will be deemed waived). On this basis alone, the issue must be deemed waived. *See Yee v. City of Escondido*, 503 U.S. 519, 533 (1992) (refusing to review claims that were not raised or addressed by the state courts below).

Moreover, Petitioners' argument here is misguided because Respondents did seek relief under Colorado's declaratory judgment statute. *See* R., I, 115-187A. Indeed, one of the remedies awarded by the trial court was quite plainly a declaratory judgment finding Adams County's sanction notices were legally inadequate. *See* App. B, at 49a. Second, Petitioners' argument misses the mark because the *Parratt/Hudson* doctrine applies ***only*** in situations whether the deprivation of property results from "random and unauthorized" action by state actors. *See Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 436-37 (1982). In contrast, when a deprivation of property occurs as a result of a standard policy or practice of state agency, as the courts below found in this case, then a plaintiff may bring a procedural due process claim. *See id.*

Because the trial court found that both CDHS and Adams County had consistently failed to provide adequate sanction notices over a prolonged period of time, *see* App. B., at 40a-47a and 49a, the deprivation of property in this case was not the result of "random and unauthorized" acts. *See id.* As a result, the *Parratt/Hudson* doctrine is completely inapposite.

CONCLUSION

For the reasons set forth above, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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